The Incorporated Accountants' Journal.

THE OFFICIAL ORGAN OF

THE INCORPORATED ACCOUNTANTS' JOURNAL *is published monthly, on the first day of each month, at an Annual Subscription of 12s. 6d., which includes postage to all parts of the world. The price of a single copy is 1s. 3d., postage extra.*

Communications respecting the general business of the paper to be addressed to the Secretary of the Society of Incorporated Accountants and Auditors, 50, Gresham Street, Bank, London, E.C.2. Cheques and postal orders should be made payable to the Society, and crossed "Bank of England."

Letters for the Editors to be forwarded to them, care of the Secretary, as above. Correspondence, copies of reports and accounts, &c., will be welcomed from the profession.

Contents.

Professional Notes.

INCORPORATED Accountants will share with Chartered Accountants the sympathy that is felt throughout the profession with the Lord Mayor of London and President of the Institute of Chartered Accountants (Alderman E. C. Moore) in his illness, from which we are happy to say he is rapidly recovering. Following upon his serious accident in the early part of the year, an operation with a long period of convalescence is no light matter, and all will admire the pluck and fortitude of the Lord Mayor in facing this additional trouble. There is every hope that during the month of October he will be able to resume his official duties and have an opportunity of bringing his Mayoralty to a brilliant conclusion.

The Society of Incorporated Accountants and Auditors has its own anxieties. The Vice-President, Major G. A. Evans, who was to have taken a prominent position in welcoming the guests at the Autumnal Conference at Cardiff on October 3rd-6th, is somewhat seriously unwell, and we regret to say that there is no prospect of his taking any part in the forthcoming Conference. All will sympathise with him in this misfortune at the outset of his year of office.

We understand that the Yorkshire District Society of Incorporated Accountants and Auditors has decided to entertain Alderman Sir Charles Wilson, M.P., LL.D., at a complimentary dinner, to be held at the Queen's Hotel, Leeds, on Monday, October 22nd, in recognition of the honours recently conferred upon him and of his long and valuable services as President of the Yorkshire Society. We are glad that our fellow members in the West Riding are acknowledging in this manner the great ability and force of character to which Sir Charles' position is due. It is now nineteen years since Sir Charles Wilson was President of the Parent Society, and his services in that capacity, as well as in his present office of Chairman of the Parliamentary Committee of the Council, are held in high esteem.

A memorandum has been issued by the Ministry of Health summarising and explaining the provisions of a draft Rating and Valuation Bill which is about to be put forward by the Government. The general effect of the measure will be to abolish parochial rating and to transfer the rating functions of Overseers to Town Councils and District Councils, and to substitute boroughs and urban and rural districts for parishes as rating areas. It is also proposed, where this has not already been done by local acts, to abolish the separate rates for different purposes and to substitute in all urban areas a consolidated general rate. The result of this will be a unification of the rate fund accounts.

In dealing with the valuation for rating purposes it is proposed that there shall be only one valuation for local rating and national taxation, and, following the London procedure, the valuation will be renewed not less frequently than once in five years. There will, however, be a provision for the amendment of the valuation at any time during the quinquennial period at the instance either of the ratepayer or the rating authority. The gross value will be the gross estimated rental of the past, viz, the annual rent which a tenant might reasonably be expected, taking one year with another, to pay, the landlord bearing the cost of maintenance and the tenant paying the usual rates and taxes. This follows the general effect of the existing case law.

The rateable value will be the *operative* rateable value, that is, the actual amount upon which rates are to be paid, and this rateable value is to be arrived at by percentage reductions of the gross value according to the purposes for which the properties are used. These reductions or allowances are set out in one of the schedules to the Act and vary from

25 per cent. downwards, with a provision for a special rate to be ascertained in certain cases, the general idea being that the scale of allowances shall reproduce the average amount, taking the country as a whole, of the customary abatement hitherto accorded to each of the various classes of property. The scale of allowances above referred to is a provisional one, and is based on the existing London scale. It is not proposed that the new measure shall apply to London, except the provisions in Part I relating to precepts and the provisions in Part II respecting the valuation of special properties. The first new valuation lists are intended to come into force on April 1st, 1926, or April 1st, 1927.

Clause 59 of the draft Bill confers some rather extraordinary powers on the Minister of Health. It provides that—

"*If any difficulty arises* in connection with the preparation of the first valuation list to be made under this Act for any area, or otherwise *in bringing into operation any of the provisions of this Act, the Minister may by order* constitute any assessment committee . . . or do any other thing as appears to him necessary or expedient for securing the due preparation of the list or for bringing the said provisions into operation, and any such order may *modify the provisions of this Act* so far as may appear to the Minister necessary or expedient for carrying the order into effect."

The italics are ours, and the effect of the italicised words seems to be to empower the Minister of Health to alter any of the provisions of the Act to get over any difficulty that may arise.

The financial editor of *The Times* calls attention to a matter which has perhaps escaped the notice of most people, namely, that the average return on the best class of securities is only a little above that which was obtainable in pre-war years if allowance is made for the higher rate of income tax which the dividends have to bear. For instance, 2½ per cent. Consols, now quoted at 58½, give a gross yield of £4 5s. 8d. per cent. and a net yield (after deducting tax) of £3 6s. 6d. per cent. In 1913 Consols stood at 78 and gave a gross yield of £3 4s. 2d. and a net yield of £3 0s. 5d., the income tax at that time being only 1s. 2d. in the £. There is thus a difference of only 6s. 1d. per cent. between the net pre-war income and the corresponding income now. The difference in the cost of living, which has gone up since pre-war days by at least 60 or 70 per cent., is not by any means covered by the additional yield on these securities. The inference must therefore be that if the reduced value of money is taken into consideration gilt edged securities are much dearer now than they were before the war.

The report of the Chief Registrar of Friendly Societies shows that the membership of registered Trade Unions declined from nearly 7,000,000 to about 5,500,000 during the year 1921, and that the accumulated funds were reduced by £5,000,000. These reductions are due to more than one cause. In the first place, the severe depression in trade resulted in the trade unions having to disburse nearly £7,500,000 in unemployment pay beyond the amount recovered from the Ministry of Labour under the State Insurance scheme. In the next place there was an expenditure of £3,500,000 upon pay disbursed in connection with the coal mining dispute. It is stated, however, in the report that notwithstanding these heavy drains upon the funds of the unions they were able to carry forward at the end of the year a larger balance than they ever had before the war. It has to be borne in mind, however, that this balance has not the same value as it had then, owing to the higher cost of living. But the feature that will tell most heavily against these unions in the future is the drop of nearly 1,500,000 in their membership.

Not very much has been heard recently of the Exports Credit scheme, and we fear that it has not had quite the beneficial effect that was anticipated. Of the total of £26,000,000 agreed to be provided for the financing of long term credits, only a little more than half had been authorised up to the beginning of July last, while the amount actually taken up amounted only to £5,500,000. This represents the working of the scheme for a period of four years. According to a writer in the Westminster Bank's *Review* the experiment in other countries has been equally unsatisfactory. In the United States, for example, the advances sanctioned amounted only to $5,500,000 and the actual advances to $3,750,000, while France and Belgium have succeeded in doing very little, notwithstanding that the former provided a Government subsidy.

Although the British scheme has fallen very much short of expectations, it has apparently been more successful than any of the others. In some quarters it has been alleged that the "hidden hand" of the Treasury has been accountable for the small amount of the advances, but this is hardly consistent with the fact that less than half of the amount authorised has been taken up. The real reason is probably the one suggested by the *Review*, namely, that, with an open handed policy, export credits might degenerate into payments by taxpayers to manufacturers in order that the latter might make gifts abroad. The Continent of Europe is so impoverished that it is not a question of selling, but of giving goods to would-be purchasers. The principle of making gifts is not a desirable one, but if gifts must be made for the relief of unemployment it is preferable that they should be made at home and not abroad.

As this issue is going through the press the official announcement is published that the King has approved that the dignity of a baronetcy of the United Kingdom should be conferred upon Alderman Edward Cecil Moore on the occasion of his retirement from the office of Lord Mayor of London, and that the honour of knighthood should be conferred upon Mr. John Edward Kynaston Studd and Mr. Stephen Henry Molyneux Killik, on the occasion of their retirement from the office of Sheriffs of the City of London. We have already made a special reference to the Lord Mayor in another paragraph. Sir Stephen H. M. Killik is a member of the Committee of the

London Stock Exchange. In his earlier days he was active in the accountancy profession, and his name will be found on the roll of members of the Society as a Fellow not in practice. Sir John E. K. Studd's services on behalf of the young men of London are well known, and we have every reason for congratulating the Lord Mayor and the Sheriffs upon their well deserved honours.

The Position of Collecting Bankers.

During the current year, case law has been further enriched in connection with the protection afforded to collecting bankers by sect. 82 of the Bills of Exchange Act, 1882, and the degree of diligence required on their part if they are to be immune from prosecution. The subject has always been a fruitful one for application to the Court, and although much has been written by way of comment upon and elucidation of the law, it may not be inopportune again to review the position in the light of recent judicial observations. The section in question provides as follows:—

> Where a banker in good faith and without negligence receives payment for a customer of a cheque crossed generally or specially to himself, and the customer has no title or a defective title thereto, the banker shall not incur any liability to the true owner of the cheque by reason only of having received such payment.

It will be noted that a thing is deemed to be done "in good faith" within the meaning of the Bills of Exchange Act where it is in fact done honestly, whether it is done negligently or not (sect. 90); consequently the banker must have acted not only in good faith but without negligence if he claims protection. Were it not for the interpretation in sect. 90 it might reasonably be assumed that "good faith" and "acting without negligence" were synonymous terms and that the inclusion of both in sect. 82 was by way of emphasis. As it is, however, it is necessary for both aspects to be considered by the Court when an appeal is made for its decision.

The section only relates to cheques, so that if a customer pays in orders which do not conform to the statutory definition of a cheque, no protection is afforded. Further, the banker must be acting for a "customer," and this term would not include a person who has no account at a bank although the banker has been in the habit of cashing cheques for him (*Great Western Railway* v. *London and County Bank* (1901) (A.C., 414)), but a person who has opened an account with a cheque which formed the subject of the action is so regarded (*Ladbrooke* v. *Todd* (111 L.T., 43)). To come within the operation of the section the cheque must be crossed generally or specially to the banker and prior to its receipt by him, for if the banker himself crosses the cheque the section does not apply (*Capital and Counties Bank* v. *Gordon* (1903) (88 L.T., 574)); nor would the banker be protected if the cheque were restrictively crossed to some other banker. These interpretations are logical having regard to the spirit of the Act, but it is not quite so clear why bankers should, or might, incur liability for dealing in good faith with the cheques of their customers not crossed when paid in. The mere fact that an option is given to the holder of the instrument either to present the cheque for payment at the counter or to collect it through his banker ought not to prejudice the latter's position should the title to the cheque prove defective. The banker is, of course, entitled to request the customer to cross the cheque prior to its lodgment for collection, and this is frequently done, but the necessity for such differentiation is not apparent.

Prior to 1906 the position of the banker also depended upon whether he was acting as an agent for collection or a holder in due course, but since the amending legislation contained in the Bills of Exchange (Crossed Cheques) Act passed in that year has rendered this distinction immaterial, there is no necessity here to discuss it further. The question is sometimes raised, however, as to whether the banker could claim the protection of the 1906 Act if, instead of his customer drawing against the cheque paid in, he actually cashed it. There appears to be no sound reason for the protection being withdrawn in such circumstances, since the distinction is only one involving book-keeping entries, and the issue of a cheque is not a condition precedent to enable a banker to discharge demands properly made upon him. Bankers seemingly consider that they are protected since the course mentioned is adopted in practice, although probably only in those cases where the balance standing to the credit of the customer is sufficient to enable recoupment should his title to the cheque prove defective.

The banker's liability, apart from the questions above referred to, mainly rests on two factors:—

> (1) Were the cheques paid in by the customer drawn in his favour or endorsed to him?
>
> (2) Did the banker act in good faith and without negligence?

Obviously the banker is only expected to act for his customer, and consequently to collect cheques on which the name of his customer appears either as payee or endorsee. In other cases liability may attach to the banker, but he is not expected to regard *all* cheques with which he deals as subjects for detailed investigation, but he must not shut his eyes to facts which, by their nature, call for inquiry. This was illustrated in the case of *Crumplin* v. *The Joint Stock Bank* (30 T.L.R., 99), where the circumstances were as follows:—A stockbroker employed as manager and cashier, one Rands, who introduced Davies to his principal as a prospective client. One transaction only was put through by Davies, but Rands, on several occasions extending over some years, carried on speculative dealings with his firm on his own account but in Davies' name. Cheques were drawn by the firm crossed "not negotiable," and in two cases signed "per pro" and handed to Rands for transmission to

Davies. Such cheques were paid into an account kept by Rands at defendants' bank. It was held that the bank was not liable having regard to the facts that Rands paid in several cheques of his own, and that the cheques drawn in favour of Davies were for comparatively small amounts and were paid in at long intervals. There was nothing in the series of transactions which was calculated to arouse suspicion. Mr. Justice Roche in his judgment referred to a dictum of Mr. Justice Coleridge in *Morison* v. *London County and Westminster Bank*, who had held that the fact that cheques were signed "per pro" ought to put a banker upon inquiry, but in the view of the former, such observation was meant to relate only to that particular case, and not to be automatic in its application.

The correctness or otherwise of the signature of the drawer of a cheque is a matter more for the paying than the collecting banker, and the latter would be protected in collecting a cheque signed "per pro" which had been duly honoured by the former who is the proper person to inquire as to the limitation of the agent's authority. Where, therefore, the cheque has been duly honoured by the bank on which it is drawn, sect. 25 does not operate to deprive the collecting banker of the protection afforded by sect. 82; nor seemingly is the latter's position affected in such a case by the addition of the words "not negotiable" to the cheque (*Morison* v. *London County and Westminster Bank, Limited* (83 L.J., K.B., 1202)).

An additional factor was introduced in *House Property Company of London, Limited*, v. *London County and Westminster Bank* (31 T.L.R., 479), where a cheque drawn in favour of Hanson and Others or Bearer was paid in by a customer (not being any of the intended payees) who was known by the bank to be a solicitor. The cheque was crossed "A/c Payees," and the bank was held liable for negligence notwithstanding the defence that the customer was the "bearer," the Court holding the view that the whole of the circumstances were such as to justify inquiry as to the customer's title.

If the customer endeavours to pay in for collection cheques drawn on a Government department, a corporation, or even a limited company, strict inquiry should be made as to the customer's authority; a mere endorsement, apparently regular, is not sufficient. The banker is put on inquiry and failure in this direction renders him guilty of negligence and consequent loss of the protection afforded by sect. 82. Some important cases serve to illustrate this point. In *Ross* v. *London County Westminster and Parr's Bank* (1919) (35 T.L.R., 315), an employee of the estates office of the Overseas Military Forces of Canada misappropriated 32 cheques, of the aggregate value of about £3,900, which had been drawn over a period of ten months payable to "The Officer in Charge, Estates Office, Canadian Overseas Forces," and which had been crossed generally, and endorsed generally by the employee with the original intention of their despatch to the Paymaster-General of those forces for payment to the various beneficiaries. The employee had opened a small account in his own name at a branch of the defendants' bank and paid in two of the cheques, the others being paid in at another branch for transmission to the branch at which his account was kept. Held that the bank was liable for conversion as a consequence of its negligence.

A more recent case (*A. L. Underwood & Co., Limited*, v. *Bank of Liverpool and Martin's, Limited* (1923) (39 T.L.R., 606)) emphasises the danger of regarding the personality of a limited company and its (practically) sole shareholder as coincident. It has been clearly laid down (*Saloman* v. *Saloman* (1897) (A.C., 22)) that even though a "one-man" company, the company is always a distinct and separate legal entity, and if a customer attempts to pay in to his account cheques drawn in favour of a company of which he is, to all intents and purposes, the sole proprietor, the bank will be negligent if inquiry is not instituted as to the extent of the customer's authority. In the case quoted the practice had extended over a period of two and a quarter years, a total of 34 cheques to an aggregate amount of £5,500 being involved, and Mr. Justice Roche took the view that the cashiers, innocently no doubt, had acted with negligence in the legal sense in not inquiring about cheques which were crossed in favour of the company, but which were nevertheless paid into the sole director's private account.

A charge of negligence would also attach to the banker if he allowed persons to open accounts and pay in cheques to which they had a defective title, without sufficient inquiry being directed as to the identity of the would-be customer. In *Ladbrooke and Co.* v. *Todd* (30 T.L.R., 433) A opened an account at the John Bull Bank and paid in a cheque payable to B, A falsely representing himself to be B, having secured the cheque by theft. The bank asked for no references, and had proper inquiry been made, the false statements made by A would have been revealed. The cheque was crossed with the words "A/c Payee only," which, although conveying no legal obligation on the collecting banker, should have caused him to exercise additional caution in allowing a new and previously unknown customer to draw against the cheque. The bank was therefore held guilty of negligence. This principle was confirmed in *Hampstead Guardians* v. *Barclays Bank Limited* (39 T.L.R., 229). An employee of the plaintiffs misappropriated two cheques made payable to D. Stewart & Co. He opened an account with the defendant bank in the name of D. Stewart, giving a false address and a fictitious reference. He deposited a small sum at the time, but on the following day paid in the two cheques for £416 17s. 4d. which had been drawn 23 days before, a fact not noticed by the cashier. The address was not verified but the reference was taken up, and, since the reply came from the customer himself, was in satisfactory terms. The Court held that there had been such negligence as to deprive the bank of the protection it sought, since a mere examination of the directory would have shown that there was no one of the name of Donald Stewart at the address given. The circumstance that the account was opened for a very small amount, when

the cheques, from the dates upon them, could have been paid in at the same time, was a very important factor in inducing the Judge to arrive at his conclusions.

Another case this year has caused a decision upon a novel point of interest to collecting bankers and their customers, but happily the precedent will not have wide application, as suspension of payment by the bank was the determining factor. It has been held that where a bank closes its doors before complete clearance of a cheque paid in by a customer for collection, the bank is still acting as an agent for collection and is not in the position of a holder for value. The mere fact that an entry has been made in the ledger crediting the customer with the amount did not *per se* create the relationship of debtor and creditor; the customer was therefore entitled to the full amount of the cheque (*In re Farrow's Bank* (1923) (1 C.D., 41)).

From a review of the cases referred to above, which do not by any means represent an exhaustive survey, it might appear that the lot of the banker is no enviable one, and that sect. 82 afforded only a nebulous protection, but when one bears in mind the huge volume of cheques which pass through the banks in the course of a single year the very small (almost insignificant) ratio of appeals to the Court bears eloquent testimony to the high standard of efficiency of the bankers' staffs in the performance of their duties.

Articled Clerks and Unemployment Insurance.

An important test case was brought before the Edinburgh Courts last month at the instance of the Society of Accountants in Edinburgh, an individual member of the Society and an indentured clerk, for the purpose of determining whether the apprentice was an employed person within the meaning of the Unemployment Insurance and National Health Insurance Acts. The question before the Court was whether the apprentice was an "employed person" under Clause (*a*) of Part I of the First Schedule of the Unemployment Insurance Act, 1920, which provides as follows:—

> "Employment in the United Kingdom under any contract of service or apprenticeship, written or oral, whether expressed or implied, and whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by time or by the piece, or otherwise, or except in the case of a contract of apprenticeship without any money payment."

The indenture which formed the sole contract between the master and the apprentice contained no provision for the apprentice's remuneration, but the master in fact paid the apprentice £15, £20, £25, £30 and £35 in the several years of the apprenticeship. It was admitted that in law these payments were not legally enforceable by the apprentice, and the point to be decided was whether under these circumstances the contract of service was one "without any money payment" within the meaning of the Act. The Minister of Labour held that the indentured apprentice came within the terms of the Act and was liable to be insured, and the appeal before the Court was against his ruling. The appellants contended that, on the proper construction of the clause, the payment referred to in the Act was a payment due and exigible under the contract and not a payment which, as in this case, could not be recovered at law.

Lord Constable, in delivering judgment, said that the construction of the clause must depend on its own terms. The words to be construed, when separated from the context, were: "Employment . . . under any contract of . . . apprenticeship . . . without any money payment," and he held that the words meant "without any money payment in fact." In his opinion the clause included gratuitous as well as contractual payments. But the first and most important point was whether on the facts of the case the master really paid the apprentice anything at all, because the payments practically consisted of a return of the premium, and if the payments on both sides balanced it might be said that he paid out nothing. In his Lordship's view, however, it was not permissible to slump the whole transaction in this way and consider only the net result, as the contract might fail before it had been completed owing to the bankruptcy of the master, and the object of the Statute was to ensure apprentices who received money payments against such a contingency. The appeal was accordingly dismissed.

From the foregoing it will be seen that articled clerks who receive payment by way of salary, whether under contract or by way of voluntary payment, are liable to be insured under the Unemployment and National Health Insurance Acts, but Lord Constable made it clear that in order to bring the payments within the scope of the Act they must arise out of the relationship constituted by the contract of apprenticeship and must possess a certain degree of regularity. Anything therefore in the shape of irregular payments in the form of bonuses or otherwise would probably not be sufficient to constitute a liability to insure. In his Lordship's view apprentices who receive no money payment are exempted from liability to insure because they are presumed to have means of their own or to be dependent upon someone else for their subsistence.

His Lordship's interpretation seems to us to err on the side of making the clause unnecessarily comprehensive, because a clerk serving under articles could hardly be said to be in any way dependent for his livelihood upon a payment which was not legally enforceable, but which could be withheld at the discretion of the employer. The reference to the bankruptcy of the employer is also a somewhat remote probability, and can scarcely be said to constitute the basis of a convincing argument. And again, if the meaning is "a money payment *in fact*" why should it require to be regular? The clause certainly does not say so. It is none the less a money payment although irregular both as regards time and amount.

BANKRUPTCY (ENGLAND).

New Scale of Costs.

Under date August 23rd, 1923, the Lord Chancellor has issued the following new Rules and Scale of Costs to come into operation on October 1st, 1923:—

1.—Part III of the Scale of Costs in the Appendix to the Bankruptcy Rules, 1915,* is hereby annulled and the Scale of Allowances in the Appendix to these Rules shall be substituted therefor and shall constitute Part III of the said Scale of Costs.

2.—These Rules may be cited as the Bankruptcy Amendment Rules, 1923, and shall come into operation on October 1st, 1923, and the Bankruptcy Rules, 1915, as amended, shall have effect as further amended by these Rules.

APPENDIX.

PART III.

Scale of Allowances to Auctioneers, Brokers and Accountants.

All the following charges shall be subject to reduction by agreement with the Official Receiver or the Trustee, or to increase with the sanction of the Committee of Inspection and the Board of Trade.

1.—AUCTIONEERS AND BROKERS.

Chattel Property.

For inventory, only, and one copy (not exceeding five folios)	£0 15 0
For every additional folio beyond five up to twenty and one copy	0 2 0
For each folio above twenty and one copy ..	0 1 6

For inventory and valuation:—

On the first £100	£4 0 0	per cent.
On the next £400	1 15 0	,,
Above up to £10,000	1 5 0	,,
Above £10,000	0 10 0	,,

Where an order has been made for summary administration three-fifths only of the percentages for inventory and valuation shall in the absence of special agreement be allowed.

For sales by private contract based on the valuation, half the above charges for inventory and valuation.

For sales by auction, in addition to such out-of-pocket expenses as may be authorised at the time by the Official Receiver or Trustee:—

On the first £100	£6 0 0	per cent.
On the next £400	5 0 0	,,
On the next £500	4 0 0	,,
Above £1,000	2 10 0	,,

Estates, Freehold, Copyhold and Leasehold.

For valuation of freehold, copyhold and leasehold property and reporting thereon a fee to be fixed by agreement, but not to exceed:—

On the first £1,000	£1 1 0	per cent.
On the next £9,000	0 10 6	,,
Above £10,000..	0 5 0	,,

For sales by auction of estates, freehold, copyhold and leasehold, including prior valuations, for determining amount of reserve bids—and for sale, by private contract, to include prior valuation.

On the first £300	£5 0 0	per cent.
On the next £1,700	2 10 0	,,
Above up to £5,000	1 10 0	,,
Above £5,000	1 0 0	,,
Costs of Surveys, dilapidations and specifications in discretion of Taxing Officer	£2 2 0 to 7 7 0	

The foregoing charges to be in addition to such out-of-pocket expenses as may be authorised at the time by the Official Receiver or Trustee.

* S.R. & O., 1914, No. 1824.

General.

The auctioneer or broker shall be entitled to railway fare and cab hire actually paid, if the distance travelled exceeds one mile and does not exceed five miles. If the total distance exceeds five miles, the allowances shall be in the discretion of the taxing officer, but shall not exceed the actual expense of travelling.

An auctioneer who uses his own motor car or motor cycle, instead of travelling by railway or hired vehicles, shall be entitled if the taxing officer is satisfied that such user was reasonable to an allowance not exceeding 6d. per mile.

Fees for services not provided for in the scale may be fixed by agreement with the Trustee and the consent of the Committee of Inspection and the Board of Trade.

2.—ACCOUNTANT'S CHARGES.

Where the employment of an accountant has been duly sanctioned, and in the absence of any special arrangement with the Official Receiver or the Trustee for a smaller amount, the following charges may be allowed:—

For preparing balance-sheet, investigating accounts, &c., principal's time, exclusively so employed, per day of seven hours, including necessary affidavit.	£1 11 6 to 5 5 0
Or such other sum as the Court may under special circumstances order.	
Chief Clerk's time	0 15 0 to 2 2 0
Other clerk's time, per day of seven hours	0 10 6 to 1 1 0

These charges shall include stationery except the forms used.

Correspondence.

SIMPLIFYING THE CALENDAR.

To the Editors *Incorporated Accountants' Journal.*

SIRS,—It does not appear to be generally known that anyone, with the aid of a few easily remembered key figures, can mentally calculate the day of the week of any date without using a calendar.

The days of the week from Monday to Saturday are numbered 1 to 6, with Sunday 7 or 0 (preferably the latter), and the months are similarly numbered, the number assigned to each month or group of months being *one less* than the number of the day of the week on which the month begins, *i.e.*, the month or months in any year which begin on Tuesday (2) are numbered 1, those beginning on Wednesday 2, and so on. It then follows if the number of a month is added to any date in that month and the total divided by 7, the *remainder* will be the number of the day of the week required.

For instance, the monthly numbers or key figures for 1923 are: May 1, August 2, November, February and March 3, June 4, September and December 5, April and July 6, October and January 7 or 0; and December 25th, 1923, is 5 plus 25 divided by 7, or 4 and remainder 2, which is Tuesday, and so for any other date in the current year.

The system is so simple and useful, in the absence of a calendar, that it ought to be universally known. It is, of course, necessary to ascertain and remember the 7 key figures for each year as it comes round, but, as explained, the figures are very easily found and just as easily memorised. In any case, the usual annual calendar can be vastly simplified by substituting for it a simple list of 7 monthly figures which can be carried either in the head or in the pocket.

I shall be pleased to send a complete list of key figures from January, 1800, to December, 1999, to any applicant on receipt of a stamped and addressed envelope.

2, Cleveland Gardens,
Ealing, W. 13.

C. EDMONSTONE ROSS.

September, 1923.

Incorporated Accountants' Students' Society of London.

Syllabus of Lectures and Discussions.

The following are the arrangements for the Autumn Session:—

1923.

Sept. 25th. Lecture, "Points on the Finance Act, 1923," by Mr. S. T. Morris, Incorporated Accountant. *Chairman:* Mr. F. W. Stephens, Incorporated Accountant.

Oct. 2nd. Lecture, "Examinations from a Student's Viewpoint," by Mr. G. L. Pratt, Incorporated Accountant. *Chairman:* Mr. F. Sharman, Incorporated Accountant.

Oct. 10th. Lecture, "Relations between National and Local Authorities Finance," by Mr. F. Ogden Whiteley, O.B.E., Incorporated Accountant. *Chairman:* Mr. Henry Morgan, Incorporated Accountant.

Oct. 16th. Joint Meeting with the Chartered Secretaries' Students' Society—Subject: "Mock Shareholders' Meeting." *Chairman:* Mr. A. H. Hughes, President of the Society.

Oct. 24th. Lecture, "Accountants and Strikes," by The Right Hon. Lord Askwith, K.C.B., K.C. *Chairman:* Sir James Martin, J.P., Incorporated Accountant.

Oct. 30th. Lecture, "The Importance of Detail in the Presentation of Trust Accounts," by Mr. George Drowley, Incorporated Accountant. *Chairman:* Mr. William Strachan, Incorporated Accountant.

Nov. 20th. Lecture, "Income Tax—Specific Cause," by Mr. R. M. Montgomery, K.C. *Chairman:* Mr. G. S. Pitt, President of the Society of Incorporated Accountants and Auditors.

The meetings are held at Winchester House, Old Broad Street, London, E.C., with the exception of the Joint Meeting with the Chartered Secretaries' Students' Society, which will be held at The Royal Society of Arts, John Street, Adelphi, Strand, London, W.C., and the Lecture to be given by The Right Hon. Lord Askwith, which will be held at Carpenters Hall, Throgmorton Avenue, London, E.C. The meetings commence at 6.30 p.m.

Society of Incorporated Accountants and Auditors.

MEMBERSHIP.

The following additions to the Membership of the Society have been completed since our last issue:—

ASSOCIATES.

Adams, George Harry, Assistant Treasurer, Finance Department, Nyasaland Government, Zomba.

Armson, George Arthur (H. T. Wright & Armson), Bank House, 95, High Street, Lewisham, London, S.E., Practising Accountant.

Child, Percy George, Clerk to W. Wesson & Co., 7, Hanover Square, London, W.

Collis, Howard Charles, Clerk to W. J. Ford, 28, Baldwin Street, Bristol.

Crombie, Charles McIntosh, National Insurance Audit Department, 10, Stafford Street, Derby.

Davies, David, H.M. Inspector of Taxes, 6, Richmond Terrace, Cardiff.

Fraser, Edward Merton, Clerk to W. S. Hutchison, 24, Rood Lane, London, E.C.

Hatfield, Frederick Edmund, Clerk to A. C. Roberts, Wright & Co., 9/10, Pancras Lane, London, E.C.

Jones, Sydney Arthur, Clerk to E. H. Pope, 60, Watling Street, London, E.C.

Kibart, Ralph, Clerk to Thomas May & Co., Prudential Chambers, Grey Friars, Leicester.

Macdonald, Alastair, City Chamberlain's Department, City Chambers, Edinburgh.

Patton, Bertie Milman, Clerk to E. Judson Mills & Co., 45, Fleet Street, Torquay.

Robison, Donald Lorraine, Clerk to F. W. Stephens & Co., 26/30, Salisbury House, London Wall, London, E.C.

Simmonds, James Herbert, Clerk to C. P. Barrowcliff & Co., 55-57, Albert Road, Middlesbrough.

Smith, William George, c/o The Burma Corporation, Limited, 19, Merchant Street, Rangoon.

RATING AND VALUATION PROPOSALS.

The following are extracts from the official memorandum issued by the Ministry of Health on the draft Rating and Valuation Bill which is to be submitted to Parliament next session. (Copies of the draft Bill may be obtained from His Majesty's Stationery Office, Imperial House, Kingsway, London, W.C.; price 4s. each.)

Part I.—Rating.

1.—Abolition of Parochial Rating.

Under modern conditions the parish is no longer the appropriate rating unit. A century ago over 90 per cent. of local expenditure was borne parochially, and as a natural consequence rating was also parochial. But one class of expenditure after another has been transferred to larger areas, and the small remnant still chargeable upon the parish affords no justification for the retention of the parochial system.

It is accordingly proposed to transfer the rating functions of overseers to town councils and district councils, and to substitute boroughs and urban and rural districts for parishes as rating areas.

One effect of the change would be to reduce the number of rating authorities from 12,882 to 648 in the rural areas of England and Wales, and from 2,664 to 1,119 in the urban areas.

All paid parochial officers would be transferred to the new rating authorities, and either employed by them or compensated for the loss of remunerative work involved.

It is proposed that the appointment of overseers should be discontinued, and that their miscellaneous functions, other than those in connection with rating, should, in so far as they cannot appropriately be allocated to the district council, be transferred to other authorities or persons to be indicated in a Schedule to the Bill.

2.—Consolidation of Rates.

(A) *Boroughs and Urban Districts.*—In London a combination of rates was effected by the Local Government Act, 1899, and in some of the larger towns all rates have been consolidated by local Acts. But, with these exceptions, in nearly every urban area there is levied, in addition to the poor rate, a "general district rate" or some other rate or rates differing in incidence from the poor rate, and in some cases a separate highway rate with poor rate incidence is also being levied.

With a view to simplifying accounts and procedure and reducing the number of separate demands made upon the ratepayers, it is proposed to abolish these separate rates and to substitute in all urban areas a consolidated "general rate."

In connection with this rate consolidation it is intended to preserve the 75 per cent. relief enjoyed by occupiers of agricultural land and the average percentage of relief enjoyed by certain other classes of ratepayers (*e.g.* occupiers of land used as a railway, land covered with water, &c.). In the latter respect the precedent of recent local legislation is followed, but it is important to observe that effect is to be given to these equated reliefs, not in the assessment or collection of rates, but in deducing *operative* rateable values from gross values in the valuation lists. This makes it possible to levy the general rate at one and the same poundage on all hereditaments in each rating area, and to avoid the

complication of making allowances at various percentages in the rate collection. The equation of reliefs, being a matter which concerns valuation lists, is dealt with in Part II of the Bill (see Clause 16 and the Second Schedule, and notes on pages 7 and 8 of this Memorandum).

The extent to which rate consolidation, with its consequent reduction of urban rateable values to their operative level, is to affect, or not affect, such matters as differential rating privileges and the precepting basis for urban and rural districts respectively, is referred to later.

(B) *Rural Districts.*—The Bill provides that in rural districts there should be only—

(i) A general rate, levied by the rural district council over the whole of the district and taking the place of, and having the same incidence as, the poor rate; and

(ii) A special rate, levied by the rural district council on each parish or part of the district which is separately chargeable with "special expenses" under the Public Health Acts or lighting expenses under the Lighting and Watching Act, 1833, and that the incidence of the special rate in every case should be that of a special expenses rate under the Public Health Act, 1875.

(C) *All Rating Areas.*—It is proposed,

(i) That all rates (general and special) shall be assessed, levied, collected and recoverable in the same manner as a poor rate, except that railways, &c., will be assessed to special rates at one quarter of their rateable value;

(ii) That where any sum (other than a sum which is leviable by special rate in part of a rural district) is chargeable separately on any part of a rating area, it shall be levied in that part of the area together with, and as an additional item of, the general rate.

(This provision meets the case of parish council precepts and other items which relate to separate parishes in rural districts. It also meets cases in which parts of urban rating areas are separately chargeable with certain sections of the expenditure.)

3.—Operation and Incidence of Rate.

The Bill enables rating authorities to make rates without the formality of allowance by Justices, and to make such additions to, or corrections in, rate books as circumstances may require.

An amendment is also proposed in the definition of "the period of the rate." This amendment would make the contribution of an outgoing or incoming ratepayer to the general rate of a half-year correspond exactly with the portion of the half-year during which he is in occupation. At present, when a half-year's rate is not made until the middle of the second month, a ratepayer who comes into occupation in the middle of the half-year has to pay just twice as much as a ratepayer who goes out at that time.

4.—Particulars on Demand Notes.

In some cases rating authorities are now required to give an "approximate" statement of the amount in the pound levied for each authority and for certain specified services, but the apportionments have not been uniformly reliable. The proposed reforms will make it a simple matter to give accurate information in all cases, and it is intended that in future this shall be a statutory requirement.

5.—Provisions as to Precepts.

Provision is made for county precepts, which have hitherto been sent to guardians, to be sent to the rating authorities, who will also under the Bill receive precepts formerly addressed to overseers.

A long standing grievance, which has been accentuated by each transfer of expenditure to larger areas, has been created by the existing requirement that the claims of the spending authorities upon the parochial rating authorities should be proportionate to the full assessable values of the parishes. Thus, wherever the valuation lists include more than the average amount of exempted, unoccupied or otherwise unproductive properties, the remaining ratepayers have had to bear more than their due share of charge. Even in the case of urban districts in the same precepted area, the rating for common services has been known to vary by over a shilling in the pound; and a small parish with half its assessable value temporarily unproductive may have to pay twice as much in the pound as its neighbours in respect of services common to all.

In order to remove this inequity it is proposed that precepting authorities, instead of calling for specified sums calculated by apportioning expenditure on the basis of assessable value, should call for the produce of a rate of specified poundage from all rating authorities in the precepted area. The effect of this reform would be that each ratepayer in the county, or other precepted area, would be called upon to pay one and the same amount in the pound for all common expenditure, and that the additional burden caused by particular properties being temporarily unproductive would be spread over the largest possible area.

Precepting authorities will thus be relieved of the work of apportioning expenditure and of the revision of apportionments which is necessitated where, as a result of appeals, alterations with retrospective effect are made in the valuation lists.

It will, of course, be understood that the new principle cannot be applied to cases in which expenditure is apportioned otherwise than on the assessable values of the areas concerned (*e.g.*, where it is apportioned on a fixed percentage basis).

The machinery for giving effect to the "poundage" principle of precepting is as follows:—

(i) The precepting authority will calculate the poundage of the rate required to meet their estimated expenditure by reference to estimates, submitted by the rating authorities, of the produce of a 1d. rate in their several areas, made in accordance with prescribed rules;

(ii) The precepting authority will call for the produce of a rate of defined poundage, but, in order to secure the payment of instalments as and when required, the precept will include a demand for specified payments on account, the total of which must not exceed the estimated produce of the rate in question;

(iii) The rating authority will keep a running account with the precepting authority, and the difference between the actual payments made and the sum due under the precept will be adjusted when the latter has been ascertained in accordance with the prescribed rules.

It will be observed that provision is made to secure that, in urban areas in which a consolidated rate is being levied, the produce of the precepted rate shall be ascertained by taking account of what it would have been if the percentage deductions peculiar to urban areas (item (4) in Part II of the Second Schedule) had not been made.

Such a provision is necessary in order to ensure that urban and rural rating areas shall continue to contribute to precepts on a uniform basis, *i.e.* that of the old poor rate.

6.—Unification of Rate Fund Accounts.

The amalgamation of rate funds, a matter of great importance to the municipal corporations, follows as a natural consequence of rate consolidation. Such amalgamation will remove much complication from the accounts and settle many troublesome questions connected with the allocation of items of income and expenditure, the ear-marking of loans, &c., and will make it possible to effect proper comparisons of the cost of services and render other statistical comparisons more reliable.

By reason of the abolition of parochial rating, combined with the reform of the precepting system, and the consequent avoidance of expenditure apportionments, guardians and rural district councils will be relieved of the duty of keeping a separate account with each parish in respect of common charges.

Provisos are inserted to cover the cases in which it will still be necessary to keep separate accounts of expenditure chargeable upon special areas. The division between general and special county expenses is the most important case in point. Some parochial accounts will still be needed in the ledgers of rural district councils and a few in those of urban district councils.

Provisions are also included to secure that each parish or part of a rating area shall obtain the benefit of any income or special receipts belonging to it.

7.—Rating of Owners Instead of Occupiers.

A consolidation of the provisions in regard to (i) the compulsory rating of owners in respect of small properties, (ii) the compounding arrangements under which owners can agree to pay whether the properties are occupied or not, and (iii) the rating of houses let out in parts, is a necessary

corollary of rate consolidation. The existing provisions applicable to poor rates and to general district and other rates respectively differ in a number of ways, and in neither case do they appear to be properly adapted to modern requirements.

(*a*) The present limits of value appear to call for revision in view of the more or less permanent alteration in the value of house property, and the rates of allowances at present prescribed are such as to occasion unnecessary loss of rate income. The limits of value and rates of allowances inserted in the draft Bill are purely provisional.

(*b*) Whether the owners or the occupiers are rateable in respect of houses let out in parts is a question at present governed by an enactment (sect. 7 of the Representation of the People Act, 1867) which was primarily concerned with franchise and not with rating law, and the determination of this question in relation to particular houses depends upon circumstances, some of which are fortuitous and, from the point of view of rating, irrelevant, viz:—

Whether the parish in which the house is situate is or is not wholly or partly in a Parliamentary borough.

Whether any of the parts are for the time being used otherwise than as dwellings.

Whether there has or has not been such structural alteration as to convert the house into separate tenements.

The provisions proposed would apply to all houses let out in parts, and would leave it to the rating authority to decide whether the parts have been converted into separate hereditaments. If the parts are treated as separate hereditaments they would be separately assessed, and the provisions in regard to the rating of owners and compounding would apply. If they are not so treated the house would be assessed and treated as a single hereditament, and as the hypothetical rent paid for the house as a whole would naturally be lower than the sum of the rents received for the parts the actual rate charge would probably be much the same, whether the house is rated as a whole or is rated in parts with compounding allowance to the owner.

In many cases the "owner" is not the person who lets out the parts, and it is proposed to make the person entitled to receive the rents of the parts let out the ratepayer in cases where the property is treated as a single hereditament. Certain administrative difficulties will thus be removed.

Part II.—Valuation.

It is proposed that, as is already the case in the Metropolis, there should be only one valuation in the place of the separate valuations now required for rating and taxation, that the values so determined should be the basis for the assessment of county as well as local rates, and that the gross values appearing in the valuation lists should be adopted as the gross values for the purposes of income tax (Schedule A) and inhabited house duty.

The provisions of Part II of the Bill are designed to secure that reasonable uniformity of principle and practice in which the present system is so notoriously deficient, but which is essential if the valuation is to serve the purposes above mentioned. The collaboration of the Revenue officers with the local rating authorities will help to promote such uniformity, and, inasmuch as the gross values are to be used for purposes of Imperial taxation, it is of course necessary that officers representing the Crown should be concerned in the preparation and revision of the valuation lists.

1.—Valuation Areas.

It is proposed that valuation areas should consist of—

(*a*) County boroughs,

(*b*) County districts or combinations of county districts,

and machinery is provided for the determination of valuation areas by means of schemes to be prepared by County Councils after consultation with the rating authorities and boards of guardians concerned. These schemes would be submitted to the Minister for approval and he would consider objections raised and hold such inquiries as he thought necessary before giving his decision. Provision is also made for joint schemes.

2.—Assessment Committees.

In 1862 the guardians were the only popularly elected bodies rating for large areas, and it was therefore appropriate at that time to put the duty of determining assessments on committees of the boards of guardians. At the present time the expenditure of boards of guardians is no longer the chief item falling to be borne by local rates, and it is considered that the constitution of the assessment committees of the future should provide for a reasonable and equitable division of representation between the guardians, the County Councils and the councils of county districts.

It is proposed that there should be an assessment committee for each valuation area consisting, in the case of an area which is a county borough, of a committee appointed by the borough council, of whom not less than one quarter are to be nominees of the guardians. In other cases the constitution of the committee is to be dealt with in the schemes determining the valuation areas in each county. Provision is made for the appointment of representatives by rating authorities (town councils and urban and rural district councils), by guardians, and by County Councils in proportions to be settled by the scheme. It is proposed that two of the persons appointed by the County Council or county borough council, as the case may be, should be General Commissioners of Income Tax.

3.—Quinquennial Valuation.

Following the London procedure, it is proposed to require that each valuation list should be renewed not less frequently than once in five years.

It is considered desirable that within each quinquennium there should be an opportunity for spreading the work of revision, but the possibility of this is conditioned by the necessity of limiting the period over which a general review of values which are to be operative for purposes of taxation as well as rating may be spread, and it is thought that this period should not be more than two years.

The dates in the Bill have been prescribed with these considerations in view, and it will be seen that the net result would be that the work in connection with the quinquennial revision in any valuation area could be spread over three years, but that the gap between the dates when the earliest and latest revaluations in the country take effect could not be greater than two years.

4.—Effect of Valuation List.

The valuation list is to be conclusive for rating and certain other purposes, and it is contemplated that provisions will be included in a subsequent Finance Bill to fix the date from which the new valuation lists are to be used, with any necessary modifications, for purposes of taxation, and to settle various questions of detail.

5.—Form and Contents of Valuation List.

The valuation lists, which are to be in a prescribed form, are to show the gross and rateable value of each hereditament in the rating areas to which they relate.

The "gross value" will be the "gross estimated rental" of the past, viz "the annual rent which a tenant might reasonably be expected, taking one year with another, to pay," the landlord bearing the cost of maintenance and the tenant paying the usual tenant's rates and taxes. Thus the existing case law in regard to the basis of valuation would remain intact.

The "rateable value" will be the *operative* rateable value, *i.e.* the actual amount upon which rates, other than special rates in rural parishes, are to be paid. The general consolidation of rates makes it possible thus to give to the term "rateable value" its true and original significance.

6.—Ascertainment of Rateable Values.

(A) *Customary Abatements.*—It is notorious that the diversity of practice with regard to the calculation of maintenance allowances is one of the chief causes of the present want of uniformity in valuation, and some standardised scale of allowances is necessary. There are, however, serious practical objections to a standard scale of "maintenance" abatements applicable throughout the country. Moreover, when the matter is further examined it is difficult to justify maintenance deductions as such in connection with the determination of the basis of an occupier's rate. As the Departmental Committee on Local Taxation for Scotland pointed out, an occupier's ability to pay is in no sense affected by what it costs the owner to keep the property in repair.

It is therefore proposed in deducting rateable values from gross values to abandon maintenance allowances as such. As, however, this form of allowance has in the past had the effect of giving varying measures of relief to occupiers of different classes of property, it is proposed, in order to avoid any violent change in the present incidence of local taxation, to draw up a scale of allowances designed to reproduce the average amount, taking the country as a whole, of the customary abatement hitherto accorded to each of the various classes of property. The provisional scale set out in Part I of the Second Schedule is based on the existing London scale.

It will be observed that the percentages in regard to certain classes of hereditaments, including industrial premises, are left to be determined with reference to the customary abatements of the past and the desirability of attaining uniformity. It is felt that there is not sufficient material at present available to enable a national scale of deductions to be prescribed for these classes of property. It is hoped, however, that a large and increasing measure of uniformity will be attained by conferences of assessment committees and county valuation committees, and the Bill provides that scales of deductions applicable to specified classes of hereditament which are agreed to at such conferences shall be embodied in schemes to be submitted by the committees concerned to the Minister, and that such scales of deductions, as approved by the Minister after consideration of representations on behalf of the industries or ratepayers affected, shall have application, with statutory force, in the areas covered by the conferences or such wider application as the Minister may determine.

10.—Amendment of Current Lists.

The Bill provides for amendment of the valuation of individual hereditaments at any time during the quinquennium, and it is intended that such amendment should not be limited to cases of new or altered properties or change of user. The provisions of the Bill are designed to secure that as many as possible of such amendments should be submitted to the assessment committee at quarterly or half-yearly meetings as "proposals" on which the rating authority, the revenue officer and the ratepayer are agreed, so that all parties may be spared as much as possible of the trouble and expense involved in attendance before the Assessment Committee for a formal hearing of every proposed amendment; but the full rights of objection and appeal are preserved for any person dissatisfied with the proposal or the decision upon it.

It is intended that any amendment made should have effect retrospectively throughout the period of the rate which was current at the date when the proposal to amend was lodged by the ratepayer concerned or notified to him by the rating authority, as the case may be; and that the assessment of new or altered properties should be effective as from the date when such new or altered property came into occupation.

The revision of values under the provisions of this clause, so far at any rate as carried out in the latter part of a quinquennium, should tend to relieve the pressure of work in connection with the quinquennial revaluation.

Part III.—General.

1.—Application to London.

It is proposed that the provisions in Part I of the Bill with respect to precepts and the provisions in Part II with respect to the valuation of special properties should apply to London, but that otherwise the Bill should not apply to London, as so many of the reforms now proposed for the rest of the country are already incorporated in the Valuation (Metropolis) Act. It is, however, intended to discuss this question further with representatives of the various London authorities.

2.—Existing Officers.

The clause which has been inserted in the Bill dealing with "existing officers" is, it will be seen, incomplete. The provisions will need elaboration, not only in regard to the terms and conditions of transfer and compensation, but also in connection with other matters such as the preservation of superannuation rights, the cases in which assessment areas are divided, and the cases in which the present remuneration of an assistant overseer covers service as clerk to a parish council. It has accordingly been thought desirable to obtain the views of the representative associations of the local authorities and officers concerned before completing this draft clause.

Time Table.

It may be convenient to summarise the dates at which the principal changes proposed by the Bill would take effect, and at which action would require to be taken by the various local authorities to bring these changes into operation.

On the passing of the Act—

Councils of boroughs, urban and rural districts become rating authorities, and, though they cannot make rates under the Act before the appointed day, they are empowered to take such preliminary steps as will enable them to carry out their new valuation and rating duties when the time arrives.

As soon as may be after the passing of the Act—

(1) Schemes constituting valuation areas and assessment committees to be made and submitted to the Minister (three months' time limit).

(2) Prescribed forms of "return" to be obtained by rating authorities from Revenue officers and notices to be served on ratepayers to submit returns, preparatory to revision of valuation lists.

(3) Assessment committees to be appointed—

(*a*) For county boroughs, and

(*b*) For other valuation areas as soon as may be after constitution of the areas.

(4) (*a*) Central valuation authority to be appointed.

(*b*) Copies of entries in valuation list in regard to "special properties" to be sent to central valuation authority.

(*c*) The properties which are to be treated as special properties to be determined, and lists thereof to be transmitted by central valuation authority to rating authorities.

Not later than February 1st, 1925—

Estimates of the produce of a penny rate for precepting purposes, made in conformity with prescribed rules, to be transmitted to precepting authorities.

Not later than the appointed day (April 1st, 1925)—

Schemes in regard to the equation of rating reliefs (under Part IV of the Second Schedule), and in regard to the preservation of differential rating privileges (under Clause 57 (2)) to be made and submitted to the Minister by each urban rating authority.

As from the appointed day (April 1st, 1925)—

(1) New rating authorities to perform the rating functions of overseers to the exclusion of any other authority.

(2) Other functions of overseers, who are no longer to be appointed, to be performed by the persons and authorities to whom they are transferred.

(3) "General rates" in rural districts will take the place of parochial poor rates, and "special rates" of lighting rates and special expenses rates.

(4) New assessment committees to take over the duties of the present assessment committees.

(5) All overseers' accounts to be closed and the balances in hand to be paid over to the rating authorities.

(6) The provisions as to precepts come into operation—poundage precepts to be addressed to rating authorities.

(7) The general parochial accounts of precepting authorities to be closed, and apportionments of common charges to cease.

Not later than May 1st, 1925, or May 1st, 1926—

Preliminary statements, on which draft valuation lists are to be based, to be transmitted to Revenue officers.

April 1st, 1926, or April 1st, 1927—

(1) First new valuation lists come into force.

(2) "General rates" will be levied in boroughs and urban districts, with consequential unification of rate fund accounts.

April 1st or October 1st, 1930, or April 1st or October 1st, 1931, or April 1st, 1932—

Second new valuation lists come into force.

Outline of the English Law of Bankruptcy.

A Lecture delivered before the Incorporated Accountants' Students' Society of London by

Mr. W. N. STABLE, M.A.,
Barrister-at-Law.

The chair was occupied by Mr. Walter Holman, Incorporated Accountant.

Mr. Stable said: One of the many difficulties of trying to compress so wide and intricate a subject as the English law of bankruptcy into the compass of a single lecture is to present a picture of the whole subject, and not a mere collection of confusing and unimportant details. Bare generalisations about the law are, however, quite valueless.

Another difficulty arises in addressing an audience composed of many individuals differing, perhaps, widely in their knowledge of the subject under discussion. Before coming to the particular subject chosen for our discussion to-night may I venture on a few remarks which I think are generally applicable to the study of law. In approaching the study of any particular branch of law for the first time, start by getting some idea of the object the law is intended to achieve; then consider in broad outline the method by which the law seeks to achieve that object. Search out and comprehend the broad principles which underlie and run through the law. I have already suggested that generalisations are of no value, but better they than a mass of disconnected details not joined up by any comprehension of the system which in fact makes them the component parts of an intelligible whole. A knowledge of detail—that is, an intelligent knowledge of detail—is, of course, useful, but only grows round a knowledge of the principles involved, and generally comes with time and experience. In ordinary language, get the hang of the thing first, and then, but not till then, fill in the details. To-night I shall endeavour to communicate and make plain a few broad principles, though this course must involve a great deal of omission. The law of bankruptcy is the code of law which in England regulates the administration—that is to say, the collection and distribution among the creditors—of the assets of insolvent persons. The code relates solely to insolvent individuals. Though similar in many respects to, it is distinct from the code regulating the winding up or liquidation of insolvent corporations. A corporation in the eyes of the law is a distinct legal entity, just as you and I are distinct legal entities, but when it comes to be wound up it falls under a different code.

Again, bankruptcy law, though closely related to, is equally distinct from, the law regulating the administration of insolvent estates, not by compulsion of the Court but by arrangement between a debtor and his creditors. The machinery of this latter form of administration is set in motion, not by an order of the Court, but by a voluntary assignment or other surrender of his rights by a debtor to a trustee for the benefit of his creditors. This assignment is generally called a deed of arrangement, and the law as stated in the Deeds of Arrangement Act, 1914, requires the close attention of accountants. It is not, however, the subject chosen for our discussion to-night.

The Bankruptcy Act, 1914.

The law of bankruptcy for the most part is to be found in the Bankruptcy Act, 1914, an Imperial Statute consisting of 169 sections, six schedules and 388 rules. In addition certain sections of some of the earlier Acts remain unrepealed. The earliest Act of Parliament relating to bankruptcy was passed in 1542 (34 & 35 Henry VIII, c. 4), since which time, in a series of statutes, by extension in some directions and contraction in others, the law has been steadily evolved and adapted to changed conditions of civilisation, commerce and finance until in its present form it provides, if not perfection, a code that is practicable in its working and adequate in its results. Infants—by which I mean persons below the age of 21 years—probably lunatics, and married women who do not carry on any trade or business in conjunction with their husbands or on their own account are not subject to the process of the bankruptcy law.

With the above exceptions practically everybody may become or be made a bankrupt. The law, however, is largely territorial in its operation—that is to say, its jurisdiction is confined to persons who, by residing or trading within the four corners of England, become subject to it.

Difficult questions often arise as to the position of aliens who have incurred debts in this country, the solution to which must be sought in sub-sect. 2 of sect. 1 of the Act, where a definition of a debtor is found, and in sect. 4 (1) (*d*), where the essential conditions before the Court can entertain a bankruptcy petition are enumerated. Broadly speaking, the test is residence, commercial or domestic, and the time when the test must be applied is the date when the act of bankruptcy is committed on which the petition is founded.

Acts of Bankruptcy.

It might be supposed that once a creditor is in a position to prove that his debtor is of full age, subject to the jurisdiction, and unable to pay his debts, bankruptcy—that is to say, the compulsory administration of his assets with a view to their rateable distribution among the creditors—would follow as a matter of course. That is not the case. The creditor must also be in a position to prove the commission by the debtor of an available act of bankruptcy. The explanation of this lies partly in the disabilities which still attach to a bankrupt and partly in the origin of bankruptcy. In early days bankruptcy was in effect treated as a crime. A Statute of James I provided that any trader—and bankruptcy in those days was only applicable to traders—who failed and who could give no satisfactory explanation of his failure lost one of his ears. Now the essence of a crime is the commission by a rational person of a voluntary Act, hence the Act of Bankruptcy was an essential preliminary before an unfortunate trader could become subject to these somewhat stringent laws. The law is milder to-day, but bankruptcy still deprives a man of the right to hold most offices of a public character, and an undischarged bankrupt is hedged in by provisions prohibiting him from earning his living by obtaining that credit which has been called, I think, the life blood of industry. But whether the survival is justified or not, the absolute necessity of proving an act of bankruptcy before the assistance of the Court can be invoked remains

For the enumeration of the acts which constitute an act of bankruptcy, you must turn to the first section of the Act. Time will not permit me to discuss them in detail to-night, but as examples I may take the assignment by a debtor of his property to a trustee for the benefit of his creditors, or to a friend to be held in safety until the bad times have blown over, or the non-compliance with a formal notice called a bankruptcy notice which requires a debtor to pay a judgment debt.

A debtor also commits an act of bankruptcy if in the hopes of dodging his creditors he departs out of England, or absents himself from his usual surroundings, or shuts himself up so that his creditors cannot obtain access to him. Once an act of bankruptcy has been committed, provided three months have not elapsed, any creditor to whom the debtor is indebted for £50 or more may present a petition to the Court. This petition is called a bankruptcy petition, and if on the hearing the Court is satisfied of the proof of the act of bankruptcy, the existence of the debt and that the debtor will not or cannot pay, a receiving order is made.

Administration.

The creditors then hold their first meeting to decide on the course of action to pursue. In some cases the debtor comes forward with the offer of a composition (sects. 16 and 21), and if the creditors accept it and the Court sanctions it the bankruptcy is annulled. The advantage of a composition to the debtor is that he escapes the stigma of bankruptcy, while the *quid pro quo* from the creditors' point of view is that friends or relatives of the debtor generally put up some money or guarantee the payment to the creditors of a certain dividend. If no composition is approved the receiving order is followed by the order of adjudication, which makes the debtor definitely an adjudicated bankrupt. The creditors must then appoint a trustee in bankruptcy to get in and distribute the bankrupt's estate. For reasons which will be obvious to you the trustee selected is generally an accountant, and on him the duty falls to collect all the bankrupt's property, convert it into money on the most favourable terms

he can get, and after providing for the costs and expenses of the bankruptcy, and after paying certain classes of debts, such as rates, taxes, salaries, health and unemployment insurance premiums in full, to distribute the balance rateably among the creditors who have proved, *i.e.* established, their claims against the estate in due form. The creditors who may prove are not only the persons to whom the bankrupt was indebted in the ordinary sense of that word, but comprise all persons to whom the bankrupt was under any sort of liability at the date of the receiving order—with a few trifling exceptions—capable of being fairly estimated in terms of money.

In administering the estate the trustee is entitled to look to the bankrupt for any assistance he can render. Ultimately the bankrupt must undergo his public examination, where he is questioned by or on behalf of the official receiver, the trustee, and any creditor who has presented his proof of debt. If the trustee, as is often the case, is still not satisfied that he has got the whole truth he can apply to the Court under sect. 25 of the Bankruptcy Act for the compulsory examination of the bankrupt's wife or of any person suspected of having had dealings with or being in possession of any part of the property of the bankrupt. In short, every facility is given the trustee to ascertain where he stands and what the estate which he has to administer consists of.

The last step in a bankruptcy, so far as the bankrupt himself is concerned, is taken when he applies to the Court for his discharge, the effect of which is to set him free from the liabilities provable in the bankruptcy, leaving the creditors to distribute among themselves all his property acquired, not only up to the date of the receiving order, but right up to the order of discharge itself. So much for the bankrupt.

The Trustee in Bankruptcy.

What chiefly concerns you is the position of the trustee in bankruptcy. I have, I think, already indicated that the effect of the order of adjudication is to divest the bankrupt of substantially everything that he possesses. Now the very essence of property is that it belongs to somebody. My watch is mine. If I sell it to one of you it becomes yours, or, in legal phraseology, the property in the watch passes to you. Or I may hire my watch to one of you in which case the property in the watch is partly in me and partly in you, but the property in anything which is capable of being property at all must be in somebody. When, therefore, the property of the bankrupt is diverted from him by the order of adjudication, it immediately and automatically vests in or becomes the property of the trustee in bankruptcy. What that property does and does not consist of you will find by reference to sects. 37 and 38 of the Bankruptcy Act, and to those sections I recommend you to give your closest attention. I propose to deal to-night with one aspect only of those sections, and particularly with a part of sect. 38 2 (*a*) which is in these terms: "The property of the bankrupt divisible among his creditors shall comprise all such property as may belong to or be vested in the bankrupt at the commencement of the bankruptcy." Note, not at the date when the order of adjudication is made, or at the date of the receiving order, or at the date when the bankruptcy petition is presented, but at the commencement of the bankruptcy. This brings me to the doctrine of relation back, a doctrine which, if well known, is little understood, and which is really the foundation of a great deal of our bankruptcy law. Because a real comprehension of the doctrine is in my opinion so essential, perhaps you will bear with me while I endeavour to unravel and eventually I hope to remove some of the difficulties with which the subject is surrounded. First: What is the commencement of the bankruptcy? It is a common belief that the commencement of the bankruptcy is a fixed date, being three months from the presentation of the bankruptcy petition on which the receiving order is made. That is a fallacy. The commencement of the bankruptcy in each case is some uncertain date which cannot be earlier than three months from the presentation of the petition. Within that period of three months the commencement of the bankruptcy is fixed by the date of the earliest act of bankruptcy which can be proved against the bankrupt. Consider it in this way. In fact, months may elapse between the commission of an act of bankruptcy which marks the beginning and the order of adjudication which marks the climax of the bankruptcy. The petition must be filed and heard. It may be disputed. Adjournments of the hearing in practice are not infrequent. After the receiving order is made the debtor may still further delay matters by putting forward a proposal for a composition. This proposal may require time for the creditors to give it proper consideration before finally rejecting it and getting the debtor adjudicated. In theory, however, you must learn to consider the act of bankruptcy, the bankruptcy petition, the receiving order, and the order of adjudication as all happening simultaneously, and as all happening at the time when the act of bankruptcy is committed. What that date may prove to be is uncertain. To take a concrete case: A receiving order and an order of adjudication are made on a petition presented on June 1st, the act of bankruptcy alleged and proved being the non-compliance with a bankruptcy notice on May 15th. In this case the commencement of the bankruptcy is May 15th, so that everything which belonged to the debtor on May 15th passes to and vests in the trustee. Subsequently, however, we will suppose that the trustee discovers that on March 5th, *i.e.* within three months of the date of the presentation of the petition the bankrupt fraudulently preferred one of his creditors or committed some other act of bankruptcy. If this case be established in proceedings appropriate to that end, then for all purposes March 5th becomes the commencement of the bankruptcy and the title of the trustee relates back to that date, so that what the trustee gets to distribute among the creditors is all the property of the bankrupt that was his as from March 5th. From the illustration I have given you, I hope I have made it clear that the title of the trustee cannot under any circumstances relate back to a date earlier than the first day of the three months immediately preceding the presentation of the bankruptcy petition, though it does not necessarily follow that it will relate back so far.

This doctrine of relation back, which you will observe is highly artificial, may in its application have far reaching results. After the commission of the act of bankruptcy and before the receiving order the debtor may have disposed of much of his property, and questions will, and in practice often do, arise as to whether the persons to whom the property has passed can, on bankruptcy ensuing, establish a good title as against the trustee, or whether, even though they have actually paid for it, they must hand it over to the trustee. Again, I think the principles which must be applied to the solution of these problems are best illustrated by taking a concrete case. After the commission of an act of bankruptcy, but before a receiving order is made, a debtor gives his piano to his sister, he sells his motor car to a stranger who pays for it in complete ignorance of the state of the debtor's finances or of his having committed an act of bankruptcy, and he sells his watch for its full value to a friend who knew of the act of bankruptcy. After these transactions, and within three months from the commission of the act of bankruptcy, a petition is presented, followed by a receiving order and an order of adjudication. A trustee is appointed, whose title relates back to the date when the act of bankruptcy was committed, with the result that in the contemplation of the law, by virtue of the doctrine of relation back, at the time when the bankrupt disposed of the piano, the motor car and the watch they were not his property at all, but belonged to the trustee in bankruptcy, notwithstanding the fact that at that time there was no bankruptcy and the trustee as such did not exist. But who gets them, the sister, the stranger, the friend, or the trustee? The trustee gets them all unless the holder can bring himself within the protection of sect. 45 of the Bankruptcy Act. That is to say he must prove—

(1) That he took the property honestly and that the transaction was not a mere sham;

(2) That he gave valuable consideration for what he got; and

(3) That at the time he got the property he had no notice or knowledge of the commission of the act of bankruptcy.

Applying this test to the three concrete cases before us, the sister must give up the piano because she did not give value for it; the stranger, who gave value in ignorance of the facts, keeps his motor car, but the friend must give up the watch, for, though he paid for it, at the time he took it he had knowledge of the commission of the act of bankruptcy, which might, as in fact it did, result in a trustee coming into existence and claiming back the watch on the ground that when the debtor purported to sell it it was not his property to

sell, but belonged throughout to the trustee. May I endeavour to impress on your minds the necessity of accountants really grasping the full effect of this doctrine by one further illustration. An individual, the owner of a large business, finds himself in difficulties. He calls a meeting of his creditors, who resolve on a liquidation by arrangement as being the best way of keeping the business alive and getting their debts paid. The debtor, in accordance with this resolution, assigns his property to a trustee, probably an accountant, for the purpose of discharging his liabilities, not in bankruptcy but under the Deeds of Arrangement Act. The execution of this deed by the debtor is in itself the commission by him of an act of bankruptcy, so that if bankruptcy ensues the trustee under the deed will get no title to the property assigned by the deed, but will have been throughout, as against a trustee in bankruptcy, a mere trespasser, with no title in or right to the property at all.

Assume, however, that the accountant, the deed trustee, takes over the business; prices slump, capital is short, the creditors are anxious, so that eventually he has to realise a great part of the assets at a heavy loss.

While this is happening a creditor who did not assent to the deed presents a bankruptcy petition founded on the execution of the deed as an act of bankruptcy, on which the debtor is adjudicated a bankrupt. The trustee in bankruptcy then steps in, and by virtue of the doctrine of relation back calls on the deed trustee to hand over all the assets of the bankrupt that have come into his hands. This the deed trustee cannot do as he has sold them, so that in place of the assets themselves he will have to pay over to the trustee in bankruptcy their full value, which may be a sum considerably in excess of the price at which he realised them.

Disclaimer.

Let me now pass to another provision which is peculiar to bankruptcy law. As I have already told you, the property of the bankrupt vests in his trustee in bankruptcy. Now, property is not always a benefit to its owner. It may, and often does, consist of things imposing on its owner very heavy obligations and liabilities. For example, one part of the property of a bankrupt vested in his trustee may consist of leasehold property subject to the payment of a rack rent and to the performance of covenants to repair, or to expend money in other directions. Another part may consist of shares only partly paid up and subject to a heavy call, and yet another part may consist of a building contract involving the contractor in a considerable expenditure of money. In each of these cases when the property vests in the trustee he automatically becomes not only entitled to the fruits of the property but also subject to its burdens. Such a situation, where the estate is small and the creditors persons of no substance, might involve the trustee in obligations which would result in his own personal financial ruin. For the protection of the trustee, the estate and the creditors, the Bankruptcy Act, by sect. 54, has conferred on the trustee certain powers the effect of which is to enable the trustee to get rid of property the liabilities attaching to which are such as to render the property onerous or unprofitable. The scheme of this section, which is generally known as the disclaimer section, is to disembarrass the trustee and the estate of property in the nature of a white elephant while leaving the position of other parties interested in it as little affected as possible. The trustee has, broadly speaking, twelve months in which to make up his mind whether or not he will exercise his power of disclaimer over particular property, but other persons interested therein may force his hand by serving on him a written notice calling upon him to elect whether he will disclaim or not, in which case, unless the Court extends the time, he has only 28 days in which to come to a final decision.

As will be readily understood, the disclaimer section, like all legislation that seeks to alter the performance of contractual obligations voluntarily entered into by competent persons, has given rise to many very difficult problems. Nor is the effect of the section by any means free from obscurity even now. To enter into a discussion on these difficulties would be outside the scope of the present paper. I must content myself with a bare reference to the section without embarking on an investigation of the many subtleties which lurk within it. It must be obvious that cases arise in which the trustee is confronted with the difficult task of deciding whether he will disclaim a particular property or not. The property, be it a lease or a contract, or whatever its nature, may offer the promise of much profit to the estate if things turn out well, or the threat of heavy obligations if things turn out badly. In this dilemma the trustee ought to turn for guidance to the body which is known as the committee of inspection. The committee of inspection (see sect. 20 of the Act) consists of not more than five nor less than three persons, who are either creditors themselves or the duly appointed and qualified representatives of persons who are creditors, and is elected by the creditors for the purpose of meeting from time to time and exercising a general supervision over the administration by the trustee of the insolvent estate. Certain things the trustee is only authorised to do with the express authority of the committee (sect. 56), but apart from these, in any position of doubt or uncertainty it is in the first instance to the committee of inspection that the trustee should turn so as to ascertain the wishes of the accredited representatives of the creditors as to the course he ought to pursue. In the particular dilemma I have indicated, if the creditors decide that a lease or contract ought not to be disclaimed the trustee must acquiesce, but he should obtain from the creditors an indemnity which he regards as sufficient and satisfactory to protect him against any liability which may fall on him if the venture proves unsuccessful. If the creditors will not give a proper indemnity the trustee may then bring the question before the Court, and this he should do if necessary, in his own interests and for his own protection.

I have now dealt as fully as the time at our disposal will allow with the broad outlines of the system under which the property of a bankrupt is vested in a trustee, and under which a trustee can divest himself of property which he considers likely to prove more onerous than profitable. Let us now consider the duties of the trustee towards the creditors in the distribution of the estate. It will be obvious to you all that the trustee cannot proceed to distribute the assets until he has ascertained precisely the amount of the claims against the estate. This latter information can be got in the first instance from the debtor's statement of affairs, but the exact amount of the claims and their nature can only be ascertained from the proofs of the creditors themselves. Each creditor who wishes to participate in the distribution of the estate must lodge with the trustee a sworn statement setting out the amount of his claim against the estate, with sufficient particulars to show the trustee how this amount is arrived at and the nature of the claim, *e.g.* for money lent, or the price of goods sold and delivered, or damages for breach of contract. This sworn statement is called a proof, and the duty falls on the trustee to examine each proof, and if he is satisfied that it represents a genuine claim to admit it, or if he is not satisfied or is satisfied that the claim is a bogus one, or for some other reason not properly provable, to reject it. In performing this duty the trustee is acting in a judicial capacity. If the creditor is dissatisfied with the decision of the trustee he has a right of appeal to the Court, which he exercises by means of a notice of motion to which the trustee is made the respondent. When the assets have been realised and the proofs settled and ascertained, the trustee must distribute the estate, and this he does after making a sufficient deduction for the costs, charges and expenses of the bankruptcy, including his own remuneration, by dividing the residue among the creditors rateably in the form of a dividend; that is to say, each receives so many shillings in the £ according to the realised value of the assets to be distributed and the amount of the claims admitted to rank against them.

When all the assets have been got in and redistributed among the creditors the administration of the estate is at an end, and the trustee should apply to the Board of Trade for his release. His accounts are then finally audited and the manner in which his duties have been performed is checked. If the result is satisfactory the order is made which discharges him from all liability in respect of any act done or default made in the administration of the affairs of the bankrupt or otherwise in relation to his conduct as trustee.

Secured Creditors.

To turn now from this very general survey of the position of a trustee in relation to the creditors to a more particular scrutiny of certain questions with which he is not infrequently confronted. It may be that certain creditors of the bankrupt

have taken security for the credit they have given. These creditors to the extent to which they hold security are in a more favourable position than the general unsecured creditors. If the security provides cover for the whole of the debt the secured creditor gets paid in full, the surplus of the security over the debt going to the pool available for the unsecured creditors. More generally, however, a creditor is only partially secured; that is to say the security which he holds over the bankrupt's property is of less amount than the whole debt which it secures. Under these circumstances the secured creditor is not entitled to prove against the estate in competition with the unsecured creditors for the full amount of his debt unless he is prepared to give up his security for the benefit of all. This course is naturally seldom followed unless the security is worthless. The secured creditor may, however, if he realises his security and there is a deficiency, prove in competition with the other creditors for the amount of the deficiency; that is to say, for the amount of his debt, less the net proceeds realised from the sale of the security. It sometimes happens, however, that the security, though of value, is not readily or immediately realisable, in which case the secured creditor is entitled to put a value on his security and prove for the deficiency represented by the difference between the total debt and the value placed on the security. To ensure that the secured creditor who adopts this course puts a fair value on his security certain powers have been conferred on the trustee, who can either take over the property representing the security from the creditor on payment to him of the amount at which the security has been valued, or he may have the security sold for the best price it will fetch, leaving the creditor to prove for the amount of his debt less the proceeds of sale. It should be noticed, however, that these rules apply only to creditors who hold security over the property of the debtor. Creditors whose debt from the bankrupt is secured by a charge given by third persons over property which is not the bankrupt's are entitled to prove for the full amount of their debt, and to receive dividends thereon provided that they do not receive from all sources more than 20s. in the £ on the full amount of the debt.

The law relating to proofs generally by secured and unsecured creditors is set out in the Second Schedule to the Act. Another point which perhaps calls for special mention is the rules relating to the administration in bankruptcy of the estates of insolvent partnerships.

Insolvent Partnerships.

In English law a partnership as such is not a separate legal entity, but is merely a convenient phrase. In law in an action against a partnership the judgment is a judgment binding the individuals who composed the partnership at the time when the liability on which the judgment is founded was contracted. When, however, individuals who have carried on business together in partnership fall on evil days and become bankrupt, the method under which the insolvent estates are administered in bankruptcy marks an exception to this rule. For the purposes of the collection and distribution of the insolvent estates the partnership is in effect treated as a separate entity and the assets of the firm are collected in one fund, while the assets of the individual partners are collected into as many separate funds as there are partners. The creditors who have given credit to the partnership as such prove against the partnership fund, which is generally called in bankruptcy the joint estate, while the creditors who have given credit not to the firm but to an individual partner prove against the fund called the separate estate, composed of the separate assets of the individual partner to whom they have given credit. If the separate creditors of a partner are paid in full out of the separate estate of that partner and there is a surplus, that surplus is carried to the credit of the joint estate, and *vice versâ* where there is a surplus on the joint estate and a deficiency on all or any of the separate estates. This rule of administration has now received statutory sanction in sub-sect. 6 of sect. 33 of the Bankruptcy Act, 1914. Its origin goes back to a much earlier date, and in the year 1728 Lord King, who was then Lord Chancellor, refers to it as a settled resolution of convenience. The rule was further elaborated in 1794 by Lord Loughborough, who in an order dated March 6th of that year gave to it in substance the form it still bears.

Round this rule there have grown certain accretions which appear still to be the law and which perhaps deserve mention before we pass from this subject. Where there is no joint estate joint creditors may prove against and receive dividends out of each of the separate estates; if there is joint estate the joint creditors may pay off the separate creditors in full and then have recourse to the separate estates. If a joint creditor is the petitioning creditor he may prove against the separate estates.

As an example of the sharp distinction drawn in bankruptcy between the joint and the separate estates, a joint creditor of the partnership having a security upon the separate estate of one of the individual partners may prove against the joint estate for the full amount of his debt, without putting any value upon or making any subtraction in respect of his security, the reason for this being that for the purposes of administration in bankruptcy the joint and separate estates are regarded as being the property of wholly separate entities.

Summary.

Perhaps you will bear with me for a very short period while I endeavour to state in a summary form the principles which I have outlined this evening:

1.—The English law of bankruptcy is the code which governs the compulsory administration of the estates of individuals subject to the law of this country who are unable to pay their debts in full.

2.—The object of this code is to ensure that while the principles of commercial morality are not undermined debtors shall be freed from the perpetual incubus of obligations that they cannot discharge, and creditors shall receive as among themselves an equal division of whatever assets are available to satisfy their claims.

3.—An essential condition precedent to the setting of the law in motion by a creditor is the commission by the debtor of an act of bankruptcy available for the foundation of a bankruptcy petition.

4.—The bankruptcy petition is the process by which the machinery of the law is set in motion.

5.—The receiving order is the order of the Court which in effect suspends the power of a debtor to dispose of or administer his own affairs.

6.—The order of adjudication is the order of the Court which divests the property from the debtor and vests it in his trustee.

7.—The property so vested comprises practically every form of property which comes to the debtor before he obtains his discharge, including all that was his from the commencement of the bankruptcy, *i.e.*, the time of the commission by the debtor of the earliest act of bankruptcy within three months from the date of the presentation of the petition.

8.—The trustee has certain statutory powers of disclaiming or getting rid of property likely to prove more onerous than profitable.

9.—In discharging his duties the trustee must obey the directions of the committee of inspection and of the creditors. Recourse may always be had to the Court in cases of doubt or difficulty.

10.—Creditors, apart from preferential creditors whose claims are satisfied first, must share and share alike.

11.—Secured creditors who hold security for their debts over the property of the bankrupt can only prove in competition with the other creditors for that portion of their debt which on a fair valuation is not covered by their security.

12.—In bankruptcy a partnership is regarded as an entity separate from the entities of the individual partners of which it is composed. Therein bankruptcy differs from the general rule of English law.

Discussion.

Mr. A. Baldry, Incorporated Accountant: There is a point in connection with the administration of joint and separate estates which always seems to me to be anomalous, possibly because I have misread the law. Let us assume that the senior partner of a firm which is adjudicated bankrupt on March 1st has, on February 1st, one month previously, seeing what was going to happen, borrowed from his firm, say, £50,000 in cash, with the main and dominant motive of paying certain of his own separate debts to his friends, which he does. In due course, on March 1st, his firm and all the

partners are adjudicated bankrupt. This particular partner then has, we will assume, separate assets of £30,000 and separate creditors of £30,000. If I read the law rightly he can pay his separate creditors—or his trustee will—20s. in the £, subject to costs, but the trustee has no hope of recovering the £50,000 which has been paid to the other favoured creditors under fraudulent preference; because although there is a fraudulent preference notwithstanding the solvency of his separate estate, if the trustee recovered the amount from the payees, he would then in effect simply have collected it for them, and would have the pleasure of paying it out again to the same creditors at 20s. in the £. If my reading of the law is right, I think it is a very grave anomaly, and one that ought to be remedied. Then there is another point—I hope you will not think that I am getting counsel's opinion cheaply—(laughter)—and that is this: A man is adjudicated bankrupt, and he has assets and liabilities not only in this country, but abroad, say, in France; his main assets and liabilities are in this country, but he also has assets to the extent of £10,000 in France and certain liabilities there also. Is there any convention between the two countries by which the English trustee can get possession of the French assets and distribute the total assets for the benefit of all creditors, whether English or foreign. In my experience, I think it is contended that probably the French creditors could pay themselves 20s. in the £ if the French assets were sufficient. One more point if I may. From all the text books on the subject one gets the impression that in dealing with proofs a trustee must always have regard to the reality of the debt. Even where a proof is founded on a judgment debt, the trustee can, notwithstanding that, look into the facts, and if he is of opinion that the debt is not a real one, he will in spite of the judgment, reject that proof. That brings me to the point I have in mind, namely, a claim for unliquidated damages arising out of a contract and therefore provable. "A," the bankrupt, agrees on January 1st to buy 100,000 shares, say, at par on June 1st from "B." On June 1st, at which time the shares were standing at 15s. each, "A" cannot implement his contract. Later in the year "A" becomes a bankrupt—at which time the shares stand at 17s. How is the damage to be assessed, assuming that when the trustee comes to deal with the proof he finds that the shares are then worth 25s. and the creditor still retains them? Can the creditor prove in the bankruptcy for damages assessed as at the date of breach or the date of the receiving order when in fact he has retained the shares, and far from having suffered any damage in fact is 5s. in the £ better off than he would have been if the bankrupt had carried out his contract?

Mr. S. Rainsbury: I wonder if the Lecturer would explain one small point. In regard to the disposal of the debtor's property, he mentioned the case of a man who sold his watch to a friend for which he got full consideration, and he said that when the trustee comes on the scene the trustee can claim that watch back again. I was wondering why this should be, seeing that the estate has received full consideration; the estate has suffered nothing at all. In other words, instead of having the watch it has got the money.

Mr. Stable: The answer to that is that the bankrupt has very likely got the money for the watch and gone off and "blewed" the money. (Laughter.) That is what generally happens.

Mr. E. C. Wakeling: With regard to the question of the sister and the piano, the Lecturer said that the sister would have to hand the piano back because there was no valuable consideration. Would not love and affection be deemed valuable consideration? (Laughter.) The second point I have noted is with regard to the deed trustee. What remedy has the deed trustee against any claims which may be made against him by the trustee in bankruptcy? If a debtor enters into a deed with his creditors and appoints a trustee, and the conditions of the deed are faithfully carried out but the realisation of assets results in a loss, and afterwards a creditor who had not come into the agreement presents a petition in bankruptcy—it seems to me very hard that the deed trustee should have to be responsible for any loss incurred in the realisation of assets. My third point is on the question of preferred creditors. I believe the Inland Revenue Authorities are allowed as such for income tax in respect of one year. Assuming that there are five years' income tax outstanding, I should like to know whether the trustee is able to choose any one of those five years or whether the Revenue Authorities can claim any one year. I should also like to mention a case where a lady filed her petition in bankruptcy and since adjudication has been earning a salary at the rate of £3,000 a year. On her application for discharge the question was asked: "What income have you been receiving?" and she said that she just got occasional money from friends. In effect, however, she has been getting £3,000 a year. What is the position? During the course of an audit a case came to my notice which I think is of particular interest to the meeting. A certain wealthy man agreed to underwrite the majority of a new issue of ordinary shares, and the issue practically failed with the result that the man was left with one million £1 shares on his hands. He accordingly paid the application and allotment money, and there was an uncalled liability of 16s. per share, which was not called up. The man then became financially embarrassed, and in view of the fact that he owed to the company £800,000 in respect of his uncalled liability on the shares, he entered into a deed with the directors of the company whereby the shares were forfeited and the man was released from his liability of £800,000 by the payment of £10,000 at the rate of £1,000 per annum for ten years. I should be very interested to know what the position would be if the company had gone into liquidation, say, twelve months after this deed was executed? Would the liquidator be able to put the man on the B list of contributaries for an amount equal to the uncalled liability, less any sums paid in respect of the agreement? If so, what remedy would the man have against the directors? And lastly, is the agreement a valid one and binding on the company?

Mr. F. R. Schofield, Incorporated Accountant: I should like to ask the Lecturer if there is any particular reason why, under the Bankruptcy Act, an adjudicated bankrupt is precluded from occupying certain public positions, whilst it appears that a man whose debts only amount to about to £50, and who has an administration order made against him for a composition to be paid in instalments to the County Court, is under no disability. Seeing that a bankrupt is under a disability for five years after his discharge, why should a man against whom such an administration order has been made be able to retain his public appointments notwithstanding?

Mr. W. D. Menzies: I think we owe the Lecturer thanks for treating this subject, which most of us considered dry, in such a fascinating manner. The question of gifts rather perplexed me. If this piano had been given away more than three months before the date of bankruptcy, what would have been the position? I see it would have been a very difficult matter to prove the exact date when the gift was made. Again, sometimes a debtor who has committed an act of bankruptcy may state that certain moneys he has given away were given away more than three months prior to the date of the receiving order, whereas as a matter of fact the transaction was in the nature of a loan which could be recovered for the benefit of the estate. The trustee's position in that case seems to be rather complicated. Then in the case of a third party who had guaranteed an individual creditor's debt. If he has given some security to the creditor and the creditor has sold that security and reimbursed himself in that way, I take it that this third party can claim the whole amount of his loss on his security?

Mr. A. B. Sturgess: I should like to ask the Lecturer's opinion on a matter of partnership. There is a case of three partners, one of whom was a lunatic, and his was the only capital account in credit. (Laughter.) What is the position? Is his estate liable for the debts of the partnership, or can the Master in Lunacy prove against the estate as a deferred creditor? Secondly, would the answer be the same if the partner had been certified a lunatic after the act of bankruptcy?

Mr. D. F. Goode, Incorporated Accountant: I did not hear whether the Lecturer made any remarks about property passing to the trustee as coming within what is known as the "order and disposition" clause. I believe it is a subject that is the cause of much litigation, and if he could give us a few remarks on that I should be obliged. I would also like to ask him for an opinion as to the position of a creditor who had sold goods on the hire purchase system to a debtor who becomes a bankrupt, and where the debtor has sold the goods

before the act of bankruptcy without, of course, the knowledge of the creditor.

Mr. G. J. Maidment: Reverting to the piano incident, might I ask this question? If the sister were to sell that piano for value, she herself having obtained it without consideration, would the purchaser acquire a good title as against the trustee? I have one other point: Is excess profits duty a preferential claim in bankruptcy?

Mr. H. C. Rose: A simple question troubles me with regard to preferential debts. Salaries and wages are preferential for certain amounts and in respect of certain periods; must they be in respect of the four or two months immediately preceding the commencement of the bankruptcy or in respect of services rendered during any four or two months prior to the commencement?

Mr. Stable: In reply to Mr. Baldry, as regards the partnership case I think what would happen would be this: the trustee of the partners' separate fund would first of all have a shot at the particular creditors who had been paid out of the £50,000. He might be able to prove against some of them, or indeed all of them, that the payment to them was a fraudulent preference, in which case he would get the money back. Of course, as regards some of these creditors he might be unable to prove that it was a fraudulent preference, but I assume that the trustee of the separate fund gets the £50,000 back from the creditors on the ground that those creditors were fraudulently preferred. Then the question arises whether he has got to hand it over to the trustee of the joint fund. I think that is a very difficult question, and, like all legal questions, it depends upon the precise facts of the particular case; but I have some difficulty in saying how he could be made to hand it over. I think it would remain part of the separate estate of that particular creditor unless the Court was satisfied that the whole thing was a fraudulent arrangement, in which case it would, of course, be upset. But apart from fraud I think it would be part of the separate estate of the individual partner. See, however, *ex parte Snowball* (L.R.; 7 Ch.; Appeals 534). The next question was as to whether there is a convention between this country and France. So far as I know there is not, but under the English bankruptcy law what vests in the trustee is not only the property in this country but the property wherever it is situated, for what that is worth. Then, of course, you come to one of the most difficult questions a lawyer ever has to deal with—questions of international law. It may be that the English Bankruptcy Act says "We vest everything in you, the trustee," but if the trustee has to go to Timbuctoo or some other outlandish place to get the property the Courts there may snap their fingers at him and say "We do not care twopence about your English Bankruptcy Act." But so far as the English law can do it, it vests the assets in the trustee wherever those assets may be situated. Among civilised nations the Courts of other civilised nations are generally prepared to recognise the laws of other countries and apply them. Then there was a question as to unliquidated damages. I do not know whether the questioner was thinking of a specific case; I rather suspect he was, and I think I know the case. The answer is this: When you prove in bankruptcy for damages for breach of contract you must assess those damages in exactly the same way as you would if you were bringing an action in a Court of law. It is very easy to say that you get hard cases. Of course you get hard cases, but you must have a rule, and the rule in bankruptcy is this: that if a man breaks his contract on January 1st, on January 1st you must assess the damages, and it is the damages assessed on January 1st, when the contract is broken, that the other contractor is entitled to prove for. The case Mr. Baldry gave was this: A bankrupt agrees to buy shares but does not take the shares up. The shares are worth, say, 10s. on the day on which the bankrupt should have taken them up, but having agreed to pay 20s. for them the measure of damage is 10s, the difference between 10s. and 20s. Mr. Baldry says that is very bad luck, because months later in the bankruptcy the shares go up and they are worth 25s., and the owner of the shares has suffered no loss at all—in fact he has gained. But put the boot on the other leg. Supposing from being worth 10s. at the date of breach the shares subsequently went down to nothing; would he be entitled to prove for the difference between nothing and 10s.? No, of course not. You must assess your damages at the date of breach. In one case, it may be, a creditor does better, but in another case he might do much worse. You must have a rule. It is like those contracts where the rate of exchange comes in; the rate is fixed on one day, and any variation up or down must affect one party adversely. Mr. Rainsbury had a question about a watch. I think I answered that. You say that the estate has had the money. Well, the estate has not had the money; the bankrupt has had the money and he has spent it. That is the idea of relation back. If all that the trustee has got was what the bankrupt had on the day the receiving order was made I do not think any of you gentlemen would be able to retire on the fortunes you would make on the amount you collect at 5 per cent. (Laughter.) In reply to Mr. Wakeling, I am afraid "love and affection" is not a sufficient consideration. (Laughter.) Bankruptcy is a sordid subject, and if you allowed love and affection to operate as a good consideration I think you would find when you came to examine your bankrupt that he had not got any assets because he would have given them away to all his friends, of whom he was so very fond. (Laughter.) It is not an unusual case to find even now that a man is bankrupt and his wife still lives in Park Lane. (Laughter.) Now as regards the deed trustee's remedy. I think probably the deed trustee could bring an action for an indemnity against the creditors who executed the deed. He would have no remedy against anybody else, because the only people who are bound by the deed are the people who actually executed it or assented to it; where a trustee is made to pay up a good deal more than he has received, I think he would probably have a right of indemnity against the creditors who executed the deed. But they are honest people as a rule, and instead of treating him as a trespasser, the trustee in bankruptcy usually accepts him as his agent and adopts what he has done. With regard to preferred creditors' income tax I am asked: Can the trustee choose the year? I do not recollect that the point has been decided, but I do not think he can. If there are five or six years' taxes unpaid, I think the Government get a preferential claim in respect of the period most favourable to themselves. There is a distinction in the Act in this respect between rates and taxes. As regards the debtor earning a salary or income, there is a section under which the trustee can go to the Court and get an order on the debtor setting aside so much of his income. The trustee is usually wide awake, and I think he would hear of it if a lady was making £3,000 a year. He would then go to the Court and get an order; but a trustee cannot get a forward order on what a man earns, because if he does that the fellow says "Then I am not going to work." Mr. Schofield asks why is an adjudicated bankrupt put under a disability when a gentleman who has got an order in the County Court is not? The answer is "I do not know." An adjudicated bankrupt is under certain disabilities; whether it is sound policy or not, I do not express an opinion. Mr. Menzies referred to gifts. There is, of course, sect. 42 which deals with the family settlement case. Roughly, in broad outline, a trustee can get back any of the property that has been voluntarily settled by the bankrupt within two years from the commencement of the bankruptcy, and he can get back any property that has been voluntarily settled within ten years of the commencement of the bankruptcy, unless the person on whom the property is settled can satisfy the Court that at the time it was settled the bankrupt was in a position to pay off his existing debts without the aid of the property comprised in the settlement. The law does give very stringent provisions for defeating the old adage "Settle all your money on your relations and then go bankrupt." Now as regards third party guarantee. A third party guarantees a debt and puts up security—can he prove? The answer is he cannot, because otherwise you would have two proofs against the estate of the bankrupt for what was one debt. What he can do is this: If the first creditor—the principal creditor—gets 20s. in the £, either out of the dividends or out of the guarantor's security, the guarantor whose security has been sold is entitled to receive any additional dividend that goes to the first creditor. But you cannot have the first creditor and the guarantor both proving against the same fund. Mr. Sturgess raised the question with regard to three partners, one of whom was a lunatic. That is a very difficult case. I think what would happen would be this, that the lunatic, although not a bankrupt, would lose his capital account; that is to say it would go to the creditors. If when the creditors were paid there was a

surplus of assets, of course the lunatic would be entitled to have the partnership account taken as between him and the other partners; but the creditors would be entitled to have the first bite, and I think rightly so. Mr. Goode asked a question with regard to the order and disposition clause, but I think it is too late to discuss that to-night. What it comes to is this: If one person by handing over his property to another person unconsciously allows that other person to get credit as being a man of property, and he goes bankrupt, the true owner of the property, who had allowed the other man to get credit by pretending to be the owner of property which does not belong to him, loses his property. But it is a very difficult question. Mr. Maidment raised a point as to the sister who sells the piano. A *bonâ fide* purchaser for value is almost invariably protected. But there is one exception to that, a case you probably know, *In re Gunsbourg* (1920), (2 K.B., 426). It is a decision of the Court of Appeal, and there was a dissenting judgment by Lord Justice Younger. It shows you what a very stringent thing that doctrine of relation back may be. As regards Mr. Rose's question on the preferential claim—what period you must take. I do not know that the point has been decided, but on the wording of the section I do not think the months must necessarily be the months immediately preceding the receiving order.

On the motion of Mr. Baldry, seconded by Miss Colley, the Lecturer was heartily thanked for his lecture, and a vote of thanks to the chairman terminated the proceedings.

ACCOUNTANT-LECTURERS' ASSOCIATION

TENTH ANNUAL MEETING.

The annual meeting of the Accountant-Lecturers' Association was held last month at Lincoln House, Holborn, London, W.C., the President, Professor Lawrence R. Dicksee, M.Com., F.C.A., presiding.

The committee's report, which was as follows, was adopted on the motion of the President, seconded by Mr. H. A. Wesson, F.S.A.A., A.C.I.S.:—

The annual report states that a register of lecturers has been compiled for the use of educational bodies, who have thus been put into connection with qualified accountants for their lectures.

An Australian Association of Accountant-Lecturers approached the committee during the summer with a view to founding a branch of the Association on that continent, and negotiations thereon are still pending.

Election of Officers.

The following were elected as officers for the ensuing year:—President: Professor Lawrence R. Dicksee, M.Com., F.C.A. (London University); Vice-Presidents: Lieut.-Colonel J. Grimwood, C.B., D.S.O., O.B.E. (Corps of Military Accountants), Mr. T. P. Laird, M.A., C.A. (Edinburgh University), Mr. H. S. Ferguson, F.C.A. (Manchester University); Committee: Mr. H. J. Eldridge, F.S.A.A., A.C.I.S., Major F. F. Sharles, M.B.E., F.S.A.A., A.C.I.S.; and Mr. M. Moustardier, A.S.A.A., A.C.I.S., of 69, Downs Road, London, E., Secretary.

At the conclusion of the business proceedings a discussion was opened by Mr. H. J. Eldridge, F.S.A.A., on the proposition that all students should go through a general course in book-keeping before studying its application to any particular occupation. After criticism of the present methods of educational authorities the resolution was carried unanimously.

Sir James Martin has accepted, at the request of the President of the Association of British Chambers of Commerce, the position of Chairman of a Committee to consider to what extent the Bankruptcy Acts can be amended so as to afford better protection to the trading community.

Mr. Frederick Warren, M.B.E., F.S.A.A., of Haverfordwest, has been elected Deputy Chairman of the Finance Committee of the Pembroke County Council.

Reviews.

Apportionment in Relation to Trust Accounts. *By Alan F. Chick, Incorporated Accountant. London: Sir Isaac Pitman & Sons, Limited, Parker Street, Kingsway, W.C. (145 pp. Price 6s. net.)*

In this work Mr. Chick deals in a very full manner with the difficult question of apportionment, including interim dividends, arrears of cumulative preference dividends, bonus shares, change of investments, &c.; and in relation to the residue of the personality he discusses the rules in *Howe* v. *Earl of Dartmouth* and *Allhusen* v. *Whittell*. There is a full table of cases, a very complete index, and altogether the book shows that a great deal of trouble has been taken in its compilation.

Economics for Commercial Students. *Sixth Edition. By Albert Crew. London: Jordan & Sons, Limited, Chancery Lane, W.C. (422 pp. Price 5s. net.)*

This book is now well known and does not call for any detailed notice. The present edition has been revised and in many respects enlarged and reconstructed, the appendices of former editions being for the most part incorporated in the text. Examination questions set in 1923 at various public examinations have also been added as an appendix.

Statistics and their Application to Commerce. *Second Edition. By A. Lester Boddington. London: H. F. L. (Publishers) Limited, 17, Ironmonger Lane, E.C. (344 pp. Price 12s. 6d. net.)*

Statistics are being more and more used in every day commercial life, and have also been introduced into the examinations of several professional bodies. A book of this character is accordingly valuable to students. The subject is fully dealt with in two parts. In Part I is discussed the compilation of statistical data and the use of averages, both arithmetic and geometric. Fallacies in the use of percentages and the various degrees of accuracy and approximation likewise receive consideration. In Part II Mr. Boddington deals with the practical application of statistics, and explains tabulation, graphic methods of comparison, &c. Numerous examples and diagrams are supplied, and the text is clearly expressed and well arranged.

Local Authority Finance Accounts and Auditing. *By J. H. Burton, Incorporated Accountant. London: Gee & Co. (Publishers) Limited, 6, Kirby Street, Hatton Garden, E.C. (370 pp.)*

The author of this work has a wide knowledge of municipal accounts and finance, not only in practical working but also as lecturer at the Municipal High School of Commerce, Manchester. Amongst the subjects which are treated are borrowing powers and loans, questions of principle not prescribed by statute, accounts of trading departments, estimates for rates, and the financial aspect of rating. There is also a chapter on income tax in relation to local authorities and another on the auditing of their accounts, while the final chapter deals with financial investigations. The book will be found to be up-to-date and reliable.

Accountants' Costs and Time Records. *By R. C. de Zouche, F.C.A., and K. H. Mackenzie, F.C.A. London: Gee & Co. (Publishers) Limited, 6, Kirby Street, E.C. (54 pp.)*

The object of the authors of this book has been to describe the main features of a method of costing suited to practising accountants. The system outlined has been in actual operation for a number of years and is stated to have proved to be practical and efficient in its operation. The explanation of the system is brief and clear, and rulings are given of the various books and records brought into use. Although the

book is a small one, and therefore not difficult of reference, it would be improved by the addition of a summary of contents or a short index.

Some Notes on Stock Exchange Transactions. *Second Edition. By Ernest C. Pegler, F.C.A. London: H.F.L. (Publishers) Limited, 17, Ironmonger Lane, E.C. (40 pp. Price 2s. 6d. net.)*

This is a useful little pamphlet giving an explanation of Stock Exchange transactions and the method of recording them. A useful feature is the definitions which are given of many Stock Exchange terms in common use.

Railway Groups Completed. *London: F. C. Mathieson & Sons, 16, Copthall Avenue, E.C. 2. (36 pp. Price 1s. net.)*

This pamphlet will be found useful for those who are concerned with Railway Stocks. It gives the effect of the recent amalgamations showing how the old stocks have been merged into the new. An index to the schemes is provided so that stocks and shares of any of the old companies can be readily traced into the new ones.

Changes and Removals.

Mr. A. E. Downer, Incorporated Accountant, Derby and London, has removed his Derby office to Old Bank House, Irongate.

Messrs. B. W. Ellis & Co., Incorporated Accountants, announce that the partnership has been dissolved. The practice will be carried on by Mr. Frank England, Incorporated Accountant, under the same style as heretofore, with offices at 70, Basinghall Street, London, E.C., Brighton and Maidstone.

The partnership hitherto existing between Mr. C. W. Horton and Mr. W. O. Mayhew, Incorporated Accountant, has been dissolved. Mr. Mayhew announces that he has taken into partnership Mr. H. D. Lawley, Incorporated Accountant, and that the practice will be carried on under the style of Horton, Mayhew & Lawley, Incorporated Accountants, from 62, Oxford Street, London, W., and at Bognor, Barnet and Watford.

Mr. E. Luff-Smith, Incorporated Accountant, has removed his offices to 15, Old Queen Street, Westminster, London, S.W.

Mr. C. C. Payne, Incorporated Accountant, has commenced public practice at 12, Upper King Street, Norwich.

Mr. John Potter, Incorporated Accountant, has taken into partnership Mr. C. D. Harrison, Incorporated Accountant, in respect of the Blackpool practice, and the partnership will be carried on under the style of John Potter & Harrison at new offices situate at 22, Birley Street. The Fleetwood practice will be carried on under the same name as hitherto, but with new offices at 27, North Albert Street.

Messrs. Stone & Best, Incorporated Accountants, 43, King William Street, London, E.C., announce that the firm name has been changed to Stone, Porter & Stone.

Mr. F. H. Taylor, Incorporated Accountant, has commenced public practice at 46, Gresham Street, London, E.C.

Mr. J. C. White, Incorporated Accountant, has removed to 53, High Street, Sutton, Surrey.

Messrs. Wilson, Rattray & Danby announce that they have removed their Sydney offices to Cathcart House, 11, Castlereagh Street.

Scottish Notes.

(FROM OUR CORRESPONDENT.)

Meeting of Scottish Council.

A meeting of the Council of the Scottish Institute of Accountants (the Scottish Branch of the Society) was held in Glasgow on 21st ult. There were present Mr. D. Hill Jack, J.P., Mr. R. T. Dunlop, Mr. Wm. Houston, Mr. J. Cradock Walker, Mr. Arthur Batty, Mr. J. A. Gough (Glasgow), Mr. Robert Young (Elgin), Mr. James T. Morrison (Coatbridge), Mr. Archibald Macintyre, J.P. (Hamilton), Mr. James Paterson (Secretary). Mr. D. Hill Jack (President of the Branch) in the chair. Apologies for absence were intimated from Dr. John Bell, Mr. W. Davidson Hall (Glasgow), Mr. W. C. MacBean (Peterhead), Mr. Walter MacGregor, Mr. Wm. Robertson, F.F.A., Mr. J. Stewart Seggie, C.A. (Edinburgh), Mr. W. J. Wood (Perth). A large number of inquiries and applications for membership were submitted and passed on to the Examination and Membership Committee, or otherwise dealt with.

The late Mr. W. A. Davis, F.S.A.A.

We regret to report the death of Mr. William Albert Davis, F.S.A.A., Edinburgh, one of the earliest members of the Scottish Institute of Accountants, which took place on August 30th. Mr. Davis, who was 64 years of age, was well known in accountancy circles in Edinburgh, but was of a rather reserved disposition. He took a considerable interest in Freemasonry, particularly of Royal Arch Chapter No. 1, of which ancient lodge, if we mistake not, he wrote an historical account.

Accountants' Apprentices—Employed Persons.

An interesting question was decided by Lord Constable on 4th ult. respecting the liability for National Insurance of apprentices to accountants in Scotland. The question raised was whether an accountant's apprentice was an employed person within the meaning of the Unemployment Insurance and the National Health Insurance Acts. The question was raised by the Society of Accountants in Edinburgh, an individual member of the Society, and an indentured apprentice against determinations by the Ministry of Labour and the Scottish Board of Health. The material and undisputed facts in this case were briefly:—The appellant society was incorporated by Royal Charter with power to make regulations for the administration of its affairs. These regulations provided for an apprenticeship of three or five years, according to whether the apprentice did or did not hold a University degree, under a form of indenture approved by the Council of the Society under a premium of 100 guineas. The indenture made no provision for the apprentice's remuneration, but, in fact, the employer paid the apprentice progressive salaries commencing at £15 and rising to £35 during the several years of the apprenticeship. In some cases no salaries were paid, but bonuses of irregular amount were given at more or less irregular intervals. The question whether the apprentice was an employed person depended on Clause (*a*) Part I of the First Schedule: "Employment in the United Kingdom under any contract or service, or apprenticeship, written or oral, whether expressed or implied, and whether the employed person is paid by the employer or some other person, and whether under one or more employers, and whether paid by time or by the piece, or otherwise, except in the case of a contract of apprenticeship without any money payment." Lord Constable refused the appeal. In the course of an exhaustive note his Lordship said: The first and most fundamental point was whether on the facts of the present case the master really paid the apprentice anything at all, because the payments practically consisted of a return of the apprentice's premium. His Lordship thought it was a material consideration that the master only paid out approximately the equivalent of what he received. If the payments on both sides were

balanced it might be said that he paid out nothing. If the transaction between master and apprentice was considered as a whole the substantial result was that the master got no fee for his teaching, and, if the apprentice had personally advanced the premium, he got no surplus payment for his service. But in his Lordship's opinion it was not permissible to slump the whole transaction and to consider only the net results. The contract might fail before completion by the bankruptcy of the master. The object of the statute was to ensure apprentices who received money payments against such a contingency. In the appeal against the determination of the Scottish Board of Health his Lordship said the question raised in this case was the same as in the appeal by the same appellants under the Unemployment Insurance Act to the note in which his Lordship referred for the grounds of his opinion. He decided this case in accordance with that opinion.

The late Sir Duncan Carmichael.

The estate of the late Sir Duncan Carmichael, a former member of the Scottish Institute of Accountants, a director of the P. & O. Steamship Company, Limited, the P. & O. Bank, Limited, the Chartered Bank of India, Limited, a partner of Messrs. Gray, Dawes & Co., London and Bombay, &c., and who resided at Mars Hill, Greenock, has been proved at £285,000.

Mr. John Bell, F.S.A.A., who has been elected a Vice-President of the Scottish Branch, is a well-known Glasgow accountant, a partner of the firm of Messrs. Barton & Bell, an enthusiast in musical matters, and holds the degree of Doctor of Music.

Notes on Legal Cases.

[The references at the end of each of the cases under T.L.R., L.T., L.J., S.J., and W.N., refer respectively to the weekly numbers of the *Times Law Reports*, *Law Times*, *Law Journal*, *Solicitors' Journal*, and *Weekly Notes*, where fuller reports may be found. The letters H. of L., Ct. of App., C.D., K.B.D., and P.D. and A.D., indicate the House of Lords, Court of Appeal, Chancery Division, King's Bench Division, and Probate, Divorce and Admiralty Division.]

LOCAL GOVERNMENT.

Bush v. Chard.

The receipt of Poor Law Relief by way of Loan is a Disqualification for being a Member of a District Council.

The Local Government Act, 1894, sect. 46 (1) (*b*), provides that a person shall be disqualified for being elected or being a member or chairman of a council of a parish or of a district other than a borough or of a board of guardians if he has within twelve months before his election, or since his election, received union or parochial relief; and sub-sect. (8) of the same section provides that if any person acts when disqualified, or votes when prohibited under this section, he shall for each offence be liable to a fine not exceeding £20.

Chard, the appellant, was elected a member of the Nantyglo Blaina Urban District Council on April 3rd, 1922. After his election he acted as a member of the urban district council and within twelve months before or since his election he received from the guardians of the Bedwelty Union relief by way of loan to the amount of £30. Subsequently he repaid £12 to the guardians on account of the said relief. It was contended on behalf of appellant that such relief by sect. 58 of the Poor Law Amendment Act, 1834, was to be considered to be and was a loan from the guardians to the appellant and not union or parochial relief. The Divisional Court held that the receipt of union or parochial relief granted by way of loan under sect. 58 of the Poor Law Amendment Act, 1834, disqualifies the recipient for being elected or being a member of a district council if such relief was received within the time mentioned in sect. 46 of the Local Government Act, 1894.

(K.B.D.; (1923) 39 T.L.R., 693.)

COMPANY LAW.

Re Parent Tyre Company.

Alteration of Objects of a Memorandum of Association by way of Extension to New Business.

The additional business which a company by an alteration of its objects effected under sect. 9 (1) (*d*) of the Companies (Consolidation) Act, 1908, is enabled to carry on, may be a business wholly different from and having no relation to the then existing business of the company and yet be capable of being conveniently and advantageously combined with it, provided that such new business is not destructive of or inconsistent with the existing business. Whether the proposed new business is one which may be conveniently and advantageously combined with the then existing business of the company is a question for the determination of the company's managers and shareholders.

A company whose business had ultimately come to consist in the holding and management of large investments in two other companies, on the advice of its directors that the businesses of bankers and financiers might be conveniently and advantageously combined with the then existing business of the company passed a special resolution by an overwhelming majority of its shareholders to alter the objects clause of its memorandum, so as to enable the company to carry on such new businesses. Upon the petition of the company under sect. 9 (2) of the Act of 1908, the Court confirmed the alteration notwithstanding the new businesses were totally different from and bore no relation to the company's then existing business.

(C.D.; (1923) 2 Ch., 222.)

In re Walter Wright, Limited.

Reinstatement of a Company in the Register.

A company having failed, by inadvertence or mistake, to forward to the registrar the statutory returns for 1920 and 1921, the registrar addressed the usual letters inquiring whether it was carrying on business or was still in operation, and published in the *Gazette* the notice required by sect. 242 of the Companies Act that, unless cause were shown to the contrary, the name of the company would be struck off the register. Owing to a change in its registered address these communications did not reach the company, and the name was accordingly removed from the register on December 5th, 1922, though in fact the company was in a big way of business. Subsequently the principal shareholder, who had been managing director and secretary, and another shareholder applied by petition under sub-sect. (6) of sect. 242 for the reinstatement of the company. Under this sub-section any member, or creditor, or the company itself may present such a petition, but the registrar in this case prayed that the company should be added as a petitioner, so that the company could then give an undertaking to the registrar that the file of the old company should be put in order.

Held, that the petition for reinstatement should stand adjourned so as to enable the company to be joined as a petitioner.

(C.D.; 58 L.J., Ch., 200.)

EXECUTORSHIP LAW, AND TRUSTS.

Re Gardner: Huey v. Cunnington.

Signed but Unattested Memorandum creating Trust in favour of three named persons.

A testatrix by her will, dated April 23rd, 1909, bequeathed all her real and personal estate to her husband for his use and benefit during his life "knowing that he will carry out my wishes." Four days after the date of her will she signed an unattested memorandum expressing her wish that "the

money I leave to my husband" should, on his death, be equally divided among certain named beneficiaries. She died in 1919 possessed of personal estate only, and her husband died five days later. After his death his wife's will and the memorandum were found in his safe, and there was parol evidence that shortly after the execution of the will the testatrix had said in his presence that her property after his death was to be equally divided between the named beneficiaries, and that he assented thereto.

It was held by the Court of Appeal in *Re Gardner* ((1920) 2 C.D., 523) that the husband held the corpus, subject to his life interest, as a trustee for the beneficiaries named in the memorandum. One of the beneficiaries named in the memorandum died in the lifetime of the testatrix and the question arose whether her share was payable to her legal personal representative or whether the trusts of her share failed.

Romer (J.) held that the one-third share of the deceased beneficiary was payable to her legal personal representative notwithstanding that she predeceased the testatrix.

(C.D.; (1923) 2 Ch., 230.)

REVENUE.

Ord v. Ord.

Omission to Deduct Income Tax on "making payment" under the Income Tax Act, 1918.

In applying instalments of an annuity to his wife under a deed of separation which provided that it was to be paid free of any deduction whatever, the husband did not deduct income tax, believing that on the construction of the deed he was not entitled to do so.

The Divisional Court held that as he had not made the deduction in making such payment within Rule 19, Sub-rule 1 of the All Schedules Rules to the Income Tax Act, 1918 (which rule allows the person who pays the annuity to deduct the amount of tax that he has paid from the amount of the annuity he is paying, in respect to the period covered by the tax) he was not entitled to recover back the amount of the deduction. Per Lush (J.): "If the payer has voluntarily paid the amount to the annuitant, it may well be that he cannot recover it . . . he did not pay the tax on behalf of her, or at her implied request. He is really and in substance claiming to recover back (from his wife) what he has paid under a mistake of law. That is, in substance, what his claim is, though not so in form."

(K.B.D.; (1923) 2 K.B., 432.)

Saxone Shoe Company (France), Limited, v. Inland Revenue.

A Company Registered in England controlled and carrying on Business Abroad is not Assessable to Income Tax and Excess Profits Duty, but is Assessable to Corporation Profits Tax.

The Finance Act, 1920, sect. 52, enacted that a corporation profits tax should be charged in certain circumstances in respect of British companies, and defined in sub-sect. (3) a British company to be "any company incorporated by or under the laws of the United Kingdom."

The Saxone Shoe Company (France), Limited, was incorporated on April 14th, 1908, under the Companies Acts, 1862-1900, at Kilmarnock, with its registered office at Kilmarnock as a subsidiary company of the Saxone Shoe Company, Limited. The latter company was incorporated under the Companies Acts, 1862-1900, with its registered office in Kilmarnock, where it carries on the business of boot and shoe manufacturers. Subsequently it was agreed that the company (which, though on its formation subsidiary to, is independent of the Saxone Shoe Company, Limited) should act as the selling agent in France of the Saxone Shoe Company, Limited. The control of the company is abroad, and the company has on this ground not been charged to income tax and excess profits duty.

It was held that as the company was a British company within the meaning of the Finance Act, 1920, sect. 52 (3) its profits were assessable to corporation profits tax.

(Exchequer Cause; (1923) 60 Scottish Law Reporter, 466.)

MISCELLANEOUS.

New York Life Insurance Company v. Public Trustee.

Charge on Property of Foreign National.

The New York Life Insurance Company, Limited, was a company incorporated under the laws of New York, U.S.A., which carried on its business with its head office in New York and with branch offices in London and elsewhere. It issued by its London branch certain policies to German nationals. In accordance with the terms thereof the sums thereby respectively borrowed were expressed to be payable in London. The company brought an action for a declaration that the policies in question were not subject to the charge created by sect. 1 of the Treaty of Peace Order, 1919, in respect of the property rights and interests within His Majesty's Dominions or Protectorates belonging to German nationals on January 10th, 1920.

Romer (J.) in a considered judgment held that though the Treaty of Peace did not exclude life insurance policies from the charge, yet as the moneys owing by the plaintiffs to German nationals were simple contract debts, which in law were situated in the country where the debtor was for the time being residing, those debts were not, at the date in question, within His Majesty's Dominions, and accordingly were not subject to the charge.

(C.D.; (1923) 39 T.L.R., 720.)

Re Lee-on-the-Solent Railway Company.

Meaning of the word "Liabilities."

The Railways Act, 1921, sect. 5 (*a*) provides that an absorption scheme under this Act shall provide in such manner as appears necessary or expedient for the transfer to the amalgamated company of all the property, rights, powers, duties, liabilities, whether statutory or otherwise of any subsidiary company to which the scheme relates. The Court of Appeal held that "liabilities" includes all simple contract debts, whether the subsidiary company has assets to meet them or not.

(Ct. of App.; (1923) 39 T.L.R., 620.)

Jackson (Inspector of Taxes) v. Voss.

A question as to what is a "child living" for the purpose of Income Tax Allowance.

Relief was claimed in this case in respect of twin children born on July 17th, 1921, on the ground that within the legal meaning of the word they were "living" on April 6th, 1921.

Held, that the rule of law, which extended the meaning of the words "child living" to a child *en ventre sa mère* in certain classes of cases, was not applicable to the present case, where the taxing statute (Finance Act, 1920, sect. 21) gave a specific date on which a man's children were to be counted, and those born later could not be included.

(K.B.D.; (1923) 155 L.T., 367.)

Gloucester Railway Carriage and Wagon Company, Limited, v. Commissioners of Inland Revenue.

Corporation Profits Tax payable by Manufacturing Company Letting Wagons for Hire, which it subsequently Sold.

The company manufactured wagons to order, and also wagons for its own stock, some of which were let out for hire, and some sold on the hire-purchase system. In 1919 the company decided to sell the whole of its wagons let out on simple hire, and in respect of such sale realised a surplus of £147,651, over the figure at which the wagons stood in their books. This surplus was credited to revenue account, but £100,000 of it was placed to reserve account. The company appealed against the assessment to corporation profits tax on the above surplus, contending that it resulted from the sales of capital assets, and not from the course of its trade or business.

Held, that, the Commissioners having found that the company's main object was to make profits in one way and another out of making wagons, notwithstanding that they treated them in their books as "plant and machinery," the appeal must be dismissed.

(K.B.D.; (1923) 155 L.T., 434.)